

## **CHAPTER 7**

### **COASTAL PERMIT PROGRAM RULES**

as of January 20, 2004

#### **SUBCHAPTER 1. GENERAL PROVISIONS**

##### **7:7-1.1 Purpose and scope**

(a) This chapter establishes the procedures by which the Department of Environmental Protection will review permit applications and appeals from permit decisions under the Coastal Area Facility Review Act (CAFRA, N.J.S.A. 13:19-1 et seq.), the Wetlands Act of 1970 (N.J.S.A. 13:9A-1 et seq.) and the Waterfront Development Law (N.J.S.A. 12:5-3). These procedures also govern the reviews of Federal Consistency Determinations issued pursuant to the Federal Coastal Zone Management Act, 16 U.S.C. 1451 et seq., and Water Quality Certificates issued pursuant to Section 401 of the Federal Clean Water Act, 33 U.S.C. 1251 et seq., when the approvals are sought in conjunction with any of the foregoing permit applications.

(b) The following types of activities are regulated under each of these laws:

1. CAFRA: The construction of any development defined in Section 3 of the Act (N.J.S.A. 13:19-3) or in N.J.A.C. 7:7-2.1, within the coastal area described in Section 4 of the Act (N.J.S.A. 13:19-4).

2. Wetlands Act of 1970: The draining, dredging, excavation, or deposition of material, and the erection of any structure, driving of pilings or placing of obstructions in any coastal wetlands which have been mapped or delineated pursuant to the Wetlands Act of 1970. A list of these maps and a full list of regulated activities appears in N.J.A.C. 7:7-2.2.

3. Waterfront Development Law: The filling or dredging of, or placement or construction of structures, pilings or other obstructions in any tidal waterway, or in certain upland areas adjacent to tidal waterways outside the area regulated under CAFRA. These requirements are fully explained in N.J.A.C. 7:7-2.3.

##### **7:7-1.2 Reserved**

##### **7:7-1.3 Definitions**

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

“Amusement pier” means an elevated, pile-supported structure located on a beach and/or tidal water, seaward of a bulkhead or boardwalk, and perpendicular to the mean high water line, on which amusements are located. For purposes of this definition, “amusements” includes rides, games of skill or chance for prizes other than cash payoffs, vendors of toys and/or other merchandise. “Amusements” do not include games for cash payoffs, bars or restaurants.

"Beach" means a gently sloping area of sand or other unconsolidated material found on tidal shorelines, including ocean, inlet, bay and river shorelines, that extends landward from the mean high water line to either: the vegetation line; a man-made feature generally parallel to the ocean, inlet, bay or river waters such as a retaining structure, seawall, bulkhead, road or boardwalk, except that sandy areas that extend fully under and landward of an elevated boardwalk are considered to be beach areas; or the seaward or bayward foot of dunes, whichever is closest to the ocean, inlet, bay or river water.

“Bulkhead” means a vertical shore protection structure installed to withstand the forces of waves and currents. A bulkhead is not a “revetment” or a “gabion” as defined elsewhere in this section.

"CAFRA" means the Coastal Area Facility Review Act (N.J.S.A. 13:19-1 et seq.).

“Coastal bluff” means a steep slope (greater than 15 percent) of consolidated (rock) or unconsolidated (sand, gravel) sediment which is adjacent to the shoreline or which is demonstrably associated with shoreline processes. The waterward limit of a coastal bluff is a point 25 feet waterward of the toe of the bluff face, or the mean high water line, whichever is nearest the toe of the bluff. The landward limit of a coastal bluff is the landward limit of the area likely to be eroded within 50 years, or a point 25 feet landward of the crest of the bluff,

whichever is farthest inland. Steep slopes are isolated areas with slopes greater than 15 percent. All steep slopes associated with shoreline processes or adjacent to the shoreline and associated wetlands, or contributing sediment to the system, will be considered coastal bluffs.

“Coastal Permit” or “permit” means an authorization or permit issued by the Department under this chapter pursuant to any of the following statutes: the Coastal Area Facility Review Act (CAFRA), N.J.S.A. 13:19-1 et seq., the Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq., or the Waterfront Development Law, N.J.S.A. 12:5-3.

"Commercial development" means a development designed, constructed or intended to accommodate commercial or office uses. "Commercial development" shall include, but need not be limited to, any establishment used for the wholesale or retail sale of food, beverage or other merchandise, or any establishment used for providing professional, financial, or other commercial services.

"Conservation restriction" means a restriction, easement, covenant, or condition, in any deed, will or other instrument, other than a lease, executed by or on behalf of the owner of the land, appropriate to retaining land or water areas predominantly in their natural, scenic or open or wooded condition, or for conservation of soil or wildlife, or for outdoor recreation or park use, or as suitable habitat for fish or wildlife, to forbid or limit any or all:

1. Construction or placing of buildings, roads, signs, billboards or other advertising, or other structures on or above the ground;
2. Dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste or unsightly or offensive materials;
3. Removal or destruction of trees, shrubs or other vegetation;

4. Excavation, dredging or removal of loam, peat, gravel, soil, rock or other mineral substance;
5. Surface use except for the purposes permitting the land or water area to remain predominantly in its natural condition;
6. Activities detrimental to drainage, flood control, water conservation, erosion control or soil conservation, or fish and wildlife habitat preservation; and/or
7. Other acts or uses detrimental to the retention of land or water areas according to the purposes of this chapter.

“Deck” means a horizontal platform that is not enclosed by windows, walls, doors, or screens and is not covered by a roof.

"Department" means the Department of Environmental Protection.

“Development” means any activity for which a Wetlands Act of 1970 or Waterfront Development Permit is required, including site preparation and clearing. Development, for an application under CAFRA, means the construction, relocation, or enlargement of the footprint of development of any building or structure and all site preparation therefor, the grading, excavation or filling on beaches and dunes, and shall include residential development, commercial development, industrial development, and public development. Development under CAFRA and the Waterfront Development Law does not include repairs or maintenance such as replacing siding, windows or roofs, unless such repairs or maintenance are associated with enlargements which are not exempt under CAFRA pursuant to N.J.A.C. 7:7-2.1(c)4 or the Waterfront Development Law pursuant to N.J.A.C. 7:7-2.3(d). Development under CAFRA does not include debris removal or cleanup provided such activities do not involve excavation, grading, or filling on beaches and dunes.

“Dune” means a wind- or wave-deposited or man-made formation of sand that lies generally parallel to and landward of the beach, and between the upland limit of the beach and foot of the most inland slope of the dune. Dune includes the foredune, secondary and tertiary dune ridges, and all landward dune ridges and mounds, as well as man-made dunes where they exist. A small mound of loose, windblown sand found in a street or on part of a structure as a result of storm activity is not considered to be a dune.

"Dwelling unit" means a house, townhouse, apartment, cooperative, condominium, cabana, hotel or motel room, a patient/client room in a hospital, nursing home or other residential institution, mobile home, campsite for a tent or recreational vehicle, floating home, or any other habitable structure of similar size and potential environmental impact, except that dwelling unit shall not mean a vessel as defined in section 2 of P.L. 1962, c.73 (N.J.S.A. 12:7-34.37).

"Educational facility" means an elementary or secondary school.

"Excavation" means the extraction of sand, gravel, earth or any other material.

"Filling" means the depositing of sand, gravel, earth or any other material.

"Floating home" means any waterborne structure designed and intended primarily as a permanent or seasonal dwelling, not for use as a recreational vessel, which will remain stationary for more than 10 days.

"Footprint of development" means the vertical projection to the horizontal plane of the exterior of all exterior walls of a structure.

“Gabion” means a shore protection structure that is comprised of wire mesh basket(s) or mattress(es) filled with rock and used in multiples as a structural unit installed to withstand the forces of waves and currents. A gabion is not a “bulkhead” or a “revetment” as defined elsewhere in this section.

"Governmental agency" means the Government of the United States, the State of New Jersey, or any other state, or a political subdivision, authority, agency or instrumentality thereof, and shall include any interstate agency or authority.

"Grading" means leveling off to a smooth horizontal or sloping surface.

"Habitable structure" means a structure that is able to receive a certificate of occupancy from the municipal construction code official, or is demonstrated to have been legally occupied as a dwelling unit for the most recent five year period.

"Industrial development" means a development that involves a manufacturing or industrial process, and shall include, but is not limited to, electric power production, food and food by-product processing, paper production, agri-chemical production, chemical processes, storage facilities, metallurgical processes, mining and excavation processes, and processes using mineral products.

"Linear development" means a development with the basic function of connecting two points, such as a road, drive, public walkway, railroad, sewerage pipe, stormwater management pipe, gas pipeline, water pipeline, or electric, telephone or other transmission lines.

"LURP (Land Use Regulation Program) application form" means an application form used when applying for a permit or exemption pursuant to the Coastal Area Facility Review Act, Waterfront Development Law, Wetlands Act of 1970, Flood Hazard Area Control Act, or Freshwater Wetlands Protection Act, or when applying for Water Quality Certification and Federal Consistency Determinations. This form includes blocks for information regarding the permit application type, project description, project site location, property owner certification and names and addresses of the applicant and the applicant's agent.

"Man-made lagoon" means an artificially created linear waterway sometimes branched,

ending in a dead end with no significant upland drainage. Lagoons have been created through dredging and filling of wetlands, bay bottom and other estuarine water areas for the purpose of creating waterfront lots for residential development adjacent to the lagoon. A natural waterway which is altered by activities including, but not limited to, filling, channelizing, or bulkheading shall not be considered a man-made lagoon, nor shall a bulkheaded boatslip be considered a lagoon.

"Mean high water" (MHW) is a tidal datum that is the arithmetic mean of the high water heights observed over a specific 19-year Metonic cycle (the National Tidal Datum Epoch). For the New Jersey shore, the two high waters of each tidal day are included in the mean. This datum is available from the Department's Bureau of Tidelands.

"Mean high water line" (MHWL) is the intersection of the land with the water surface at the elevation of mean high water. The elevation of mean high water varies along the ocean front and the tidal bays and streams in the coastal zone.

(Note: For the above two definitions, for practical purposes, the mean high water line is often referred to as the "ordinary" high water line, which is typically identified in the field as the limit of wet sand or the debris line on a beach, or by a stain line on a bulkhead or piling. However, for the purpose of establishing regulatory jurisdiction pursuant to the Coastal Area Facility Review Act (CAFRA) and the Waterfront Development Act, the surveyed mean high water elevation will be utilized.)

"Person" means any corporation, company, association, society, firm, partnership, individual, government agency, or joint stock company.

"Pesticide" means any substance defined as a pesticide pursuant to the provisions of N.J.A.C. 7:30.

"Porch" means a covered or uncovered entrance, directly connected to a residential dwelling.

"Program" means the Land Use Regulation Program in the Department of Environmental Protection.

"Public development" means a solid waste facility, including incinerators and landfills, wastewater treatment plant, public highway, airport including single or multi-air strips, an above or underground pipeline designed to transport petroleum, natural gas, or sanitary sewage, and a public facility, and shall not mean a seasonal or temporary structure related to the tourism industry, an educational facility or power lines. "Public development" does not have to be publicly funded or operated.

"Public highway" means a "public highway" as defined in section 3 of P.L. 1984, c.73 (N.J.S.A. 27:1B-3), namely public roads, streets, expressways, freeways, parkways, motorways and boulevards, including bridges, tunnels, overpasses, underpasses, interchanges, rest areas, express bus roadways, bus pullouts and turnarounds, park-ride facilities, traffic circles, grade separations, traffic control devices, the elimination or improvement of crossings of railroads and highways, whether at grade or not at grade, and any facilities, equipment, property, rights-of-way, easements and interests therein needed for the construction, improvement and maintenance of highways.

"Qualifying municipality" means a municipality that qualifies under N.J.S.A. 52:27D-178 et seq. to receive State aid for the purpose of enabling such municipalities to maintain and upgrade municipal services and offset local property taxes. Under N.J.S.A. 52:27D-178 et seq., the Department of Community Affairs (DCA) establishes a list of qualifying municipalities for each State fiscal year. DCA's list of qualifying municipalities may be obtained on request from the Department's Land Use Regulation Program, P.O. Box 439, Trenton, New Jersey 08625, (609)292-0060.

"Regulated activity" or "activity" means any activity for which a permit is required under CAFRA, the Wetlands Act of 1970 or Waterfront Development Law, and shall also include the



terms "project" and "development".

"Regulated wetland" means any wetland which has been mapped and the map promulgated pursuant to the Wetlands Act of 1970.

"Residential development" means a development that provides one or more dwelling units.

"Revetment" means a sloped shore protection structure consisting of a facing made of stone, placed on a bank, bluff, or shoreline to withstand the forces of waves and currents. A revetment is not a "gabion" or "bulkhead" as defined elsewhere in this section.

"Seasonal or temporary structures related to the tourism industry" means lifeguard stands and associated temporary equipment storage containers, picnic tables, benches and canopies, beach badge sheds, wooden walkways, stage platforms, and portable restrooms, which remain in place only during the period from May 1 through September 30, and provided that the placement of such structures does not involve the excavation, grading or filling of a beach or dune.

"Site" means the lot or lots upon which a proposed development is to be constructed.

"Site preparation" means physical activity which is an integral part of a continuous process of land development or redevelopment for a particular development which must occur before actual construction of that development may commence. It does not include the taking of soil borings, performing percolation tests, or driving of less than three test pilings.

"Structure" means any assembly of materials above, on or below the surface of the land or water, including but not limited to buildings, fences, dams, pilings, footings, breakwaters, culverts, pipes, pipelines, piers, roads, railroads, bridges, and includes floating structures.

"Tidelands instrument" means a written document conveying, leasing or licensing lands owned or claimed to be owned as present or formerly flowed tidelands by the State of New

Jersey to public entities or private interests pursuant to N.J.S.A. 12:3-1 et seq. and N.J.S.A. 13:1B-13 et seq. Tidelands instruments include licenses, long-term leases, conveyances (often called grants), and management agreements. These documents are recorded in the office of the clerk of the county or registrar of deeds and mortgages of the county in which the property is located.

“Waterward side of development” means the area of the site located between a tidal water body and a line(s) drawn through point(s) of the footprint of the building closest to the water, and parallel to the water body, which line extends to the property boundaries. (see Appendix A, herein incorporated by reference).

#### **7:7-1.4 Standards for evaluating permit applications**

(a) All applications for coastal permits (as defined in N.J.A.C. 7:7-1.3), water quality certificates, and Federal consistency determinations shall be approved, conditionally approved or denied pursuant to the Department's Coastal Zone Management rules, N.J.A.C. 7:7E. In addition, applications for water quality certificates will be reviewed on the basis of other applicable State laws, including the State water quality standards.

(b) The Department shall not issue a permit under CAFRA unless the Department makes the findings required by N.J.S.A. 13:19-10. Such findings shall be made in accordance with N.J.A.C. 7:7E-1.5(b).

#### **7:7-1.5 Permits and permit conditions**

(a) No person shall undertake or cause, suffer, allow or permit any regulated activity without a permit issued by the Department in accordance with this chapter.

(b) The following conditions shall apply to all coastal permits. Failure to comply with any of the following shall constitute a violation.

1. A permittee shall notify the Department in writing, at least three working days prior to the beginning of construction on the site or site preparation.

2. A permittee shall notify the Department in writing within five working days prior to commencement of operation of a CAFRA development. At this time, the permittee shall also certify that all conditions of the permit that must be met prior to operation of the development have been met.

3. The issuance of a permit shall in no way expose the State of New Jersey or the Department to liability for the sufficiency or correctness of the design of any construction, structure or structures. Neither the State nor the Department shall, in any way, be liable for the loss of life or property which may occur by virtue of the activity or development resulting from any permit.

4. A permittee shall allow the authorized representatives of the Department free access to the site at all times when construction activity is taking place, and at other times upon notice to the permittee. The permittee shall provide free of charge to the Department all of its equipment reasonably necessary for inspection of the site.

5. No change in plans or specifications upon which a permit is issued shall be made except with the prior written permission of the Department, in accordance with N.J.A.C. 7:7-4.10.

6. The notice of authorization shall be posted prominently at the site during construction and a copy of the permit and approved plans shall be kept on the construction site and shall be exhibited upon request to any person.

7. The permittee shall immediately inform the Department of any unanticipated adverse effects on the environment not described in the application or in the conditions of the permit. The Department may, upon discovery of such unanticipated adverse effects, and upon the failure of the permittee to submit a report thereon, notify the permittee of its intent to suspend the permit, pursuant to N.J.A.C. 7:7-4.11.

8. Plans and specifications in the application and conditions imposed by a permit shall remain in full force and effect so long as the proposed development or any portion thereof is in existence, unless modified pursuant to N.J.A.C. 7:7-4.10.

9. If any condition or a permit is determined to be legally unenforceable, modifications and additional conditions may be imposed by the Department as necessary to protect the public interest.

10. A permit is subject to suspension or revocation for violations of its terms and conditions. A permittee shall, upon receipt of a notice of suspension or revocation, comply with the terms of

such notice and shall, if required, cease such construction.

11. The Department may issue a modified permit in accordance with N.J.A.C. 7:7-4.10.

12. If a permit condition requires the dedication of land to a political subdivision for open space and/or recreational or other uses, the permittee shall, within 45 days of the political subdivision's decision whether or not to accept the land, furnish proof to the Department of the political subdivision's decision with respect to such dedication, or the permit may be revoked as provided in N.J.A.C. 7:7-4.11.

13. In the event of rental, lease, sale or other conveyance of the site by the permittee, the permit shall be continued in force and shall apply to the new tenant, lessee, owner or assignee so long as there is no change in the site, proposed construction or proposed use of the development, as described in the original application. No such change shall be implemented unless an application for a permit modification is filed pursuant to N.J.A.C. 7:7-4.10.

14. If a permit contains a condition that must be satisfied prior to the commencement of construction, the permittee must comply with such condition(s) within the time required by the permit or, if no time specific requirement is imposed, then within six months of the effective date of the permit, or provide evidence satisfactory to the Department that such condition(s) cannot be satisfied.

15. If required by the Department as a permit condition, the permit shall be filed with the clerk of the county court in which the project site is located as notice to prospective purchasers.

16. A permittee shall employ appropriate measures to minimize noise where necessary during construction, as specified in N.J.S.A. 13:1G-1 et seq. and N.J.A.C. 7:29 (Noise control).

17. Development which requires soil disturbance, the creation of drainage structures, or changes in natural contours shall conduct operations in accordance with the latest revised version of "Standards for Soil Erosion Sediment Control in New Jersey," promulgated by the New Jersey State Soil Conservation Committee, pursuant to the Soil Erosion and Sediment Control Act of 1975, N.J.S.A. 4:24-42 et seq. and N.J.A.C. 2:90-1.3 through 1.14. These standards are hereby incorporated by reference.

18. If the Department determines that a conservation restriction, as defined at N.J.A.C. 7:7-1.3, is necessary to protect the public health, safety, and welfare, or to protect wildlife and/or fisheries, or to otherwise preserve, protect, and enhance the natural environment, the permittee

shall, prior to site preparation, submit to the Department proof that such a conservation restriction has been recorded in the office of the clerk of the county or the registrar of deeds and mortgages of the county in which the development site is located. The conservation restriction shall be in the form and terms appropriate to the property as specified and approved by the Department, and shall run with the property and be binding upon the property owner and the successors in interest in the property or in any part thereof;

(c) A permit shall be valid authority to commence construction of a development for a period of five years from its date of issuance. Where construction has commenced within this five year period, the permit, with the exception of permits issued for activities located below the mean high water line, shall upon written authorization of the Department be valid, as long as construction continues, until the project is completed subject to the provisions of (c)1 and 2 below.

1. If construction continues beyond the five year period, and then, prior to completion of the project, stops for a cumulative period of one year or longer the permit shall expire, except for projects of unusual size or scope or for projects for which are delayed due to circumstances beyond the permittee's control (such as a delay in the financing of a public works project), in which case, upon the request of the applicant prior to the expiration of the original permit, the permit may be extended for a total of 10 years from the original effective date.

2. All requests for authorization to continue construction beyond the expiration of a permit shall be submitted to the Department no later than 20 business days prior to the expiration date of the permit.

3. All permits issued for activities occurring below the mean high water line shall be effective for a fixed term not to exceed five years.

4. All water quality certificates and Federal consistency determinations issued in conjunction with a State permit will be in effect for the lifetime of the associated State permit.

5. A water quality certificate not issued in conjunction with other State permits shall be effective for five years or for the original duration of the underlying Federal permit (without renewals), whichever is shorter.

(d) The duration of validity for coastal general permits is found at N.J.A.C. 7:7-7.3(k).

(e) The Department may, after public notice, issue a general permit for activities which are substantially similar in nature and cause only minimal individual and cumulative environmental impacts. The process for issuance of General Permits and the process for authorizing various activities under the issued General Permits is detailed at N.J.A.C. 7:7-7.

#### **7:7-1.6 Provisional permits**

(a) The Department may issue a provisional permit if it finds that the beginning of construction prior to the completion of the full permit review process is necessary to meet the regulatory or funding requirements of a Federal or State agency.

(b) The issuance of a provisional permit shall not exempt the permittee from any of the requirements of this chapter. A permit application must be submitted before a provisional permit can be issued, and all permit review procedures shall be complied with following issuance of the provisional permit.

#### **7:7-1.7 Emergency permit authorization**

(a) The Department may issue an emergency permit authorization if it determines that there is an imminent threat to lives or property if regulated construction activities are not immediately commenced. Potential for severe environmental degradation will also constitute a basis for issuing an emergency permit authorization. The procedure for obtaining an emergency permit authorization is as follows:

1. The requesting party shall notify the Department's Bureau of Coastal and Land Use Enforcement by telephone of any situation which may constitute an imminent threat to lives, property or the environment. In response to this notification, the Bureau of Coastal and Land Use Enforcement will inspect the subject site whenever feasible to determine the condition of the property, and the extent of the imminent threat. The determination of imminent threat will be made solely by the Department, based on the condition of the property at the time of inspection. The findings of the inspection will be provided to the Land Use Regulation Program, together

with a recommendation regarding the request for emergency permit authorization.

2. The requesting party shall notify the Administrator of the Land Use Regulation Program, in writing, of the imminent threat, including details of the condition of existing structures, the vulnerability of people and/or property, or the imminent threat to the environment, and the proposed construction activities for which the emergency permit authorization is being sought. This written notification shall concurrently be provided to the Department's Bureau of Coastal and Land Use Enforcement.

3. The Land Use Regulation Program will make the final determination on the issuance of an emergency permit authorization. The emergency permit authorization may be oral or in writing. If oral authorization is given, the Department shall issue a subsequent written authorization within five working days. In the event that the construction activities deviate from those which have been approved by the oral or written emergency permit authorization, prior authorization of those deviations must be obtained from the Land Use Regulation Program. Any unauthorized deviation in construction from that which has been authorized will constitute a violation of this section, and may be cause for suspension and revocation of the authorization, and/or other enforcement actions.

4. Within 10 working days of the issuance of an emergency permit authorization, the property owner shall submit a complete coastal permit application to the Land Use Regulation Program. This application must include the LURP application form, appropriate permit fee, construction plans, compliance statement, and public notice, pursuant to N.J.A.C. 7:7-4.2. Upon receipt and review of the permit application in accordance with these rules and the Coastal Zone Management rules, N.J.A.C. 7:7E, the Land Use Regulation Program shall issue a coastal permit, or permits, for the activities covered by the emergency permit authorization. This permit may contain conditions that must be satisfied by the permittee in accordance with the time frames established in the permit.

#### **7:7-1.8 Procedure where more than one permit is required**

(a) When a proposed development or project requires more than one coastal permit, the Department will require only one application, but that application must comply with the requirements of each applicable permit program. This does not preclude an applicant from

submitting separate applications if the timing or magnitude of a project requires it.

(b) The Department shall assess a single permit fee for a project which requires more than one of the following permits, if the permit applications are submitted and processed simultaneously: CAFRA permits; waterfront development permits; coastal wetlands permits; stream encroachment permits; or freshwater wetlands permits (including individual permits, general permits, and transition area waivers) issued under N.J.A.C. 7:7A. The permit fee for the project shall be calculated in accordance with N.J.A.C. 7:7-10.5(a).

### **7:7-1.9 Permit fees**

Permit fees are established by the Department pursuant to the 90 Day Construction Permit Law (N.J.S.A. 13:1D-29 et seq.) and are published at N.J.A.C. 7:7-10. The Department will maintain a printed fee schedule for public use.

### **7:7-1.10 Construction and relaxation of procedures or standards**

(a) This chapter shall be liberally construed to effectuate the purpose of the Acts under which it was adopted.

(b) The Department may, in its discretion and if consistent with statutory requirements, relax the application of any of the procedures in this chapter when necessary and in the public interest.

(c) The Department may reconsider the application of one or more of the substantive standards in the rules on Coastal Zone Management at N.J.A.C. 7:7E, provided:

1. The department has rendered a decision on a permit application under the substantive standards at N.J.A.C. 7:7E as strictly applied;
2. All administrative and judicial appeals of the permit decision have been concluded; and
3. Either of the following requirements is met:
  - i. A court has determined that the issuance, modification, or denial of a coastal permit would constitute a taking of property, and the property owner thereupon submits a request for a reconsideration of the application of a substantive standard of N.J.A.C. 7:7E; or



ii. A takings complaint has been filed with the court or the court has determined that the issuance, modification or denial of a coastal permit would constitute a taking of property, and the Department initiates the reconsideration.

(d) In making the determination to reconsider application of a substantive standard of N.J.A.C. 7:7E under (c) above, the Department shall prepare a written analysis that evaluates three factors:

1. The investments the property owner made in the property that is the subject of the coastal permit application and whether the investments were reasonable and reflected reasonable expectations, in accordance with (e) below;
2. The minimum beneficial economically viable use of the property, in accordance with (f) below; and
3. The environmental impacts of the minimum beneficial economically viable use for the property, and their consistency with the goals of CAFRA, N.J.S.A. 13:19-1 et seq., the Waterfront Development Law, N.J.S.A. 12:5-1 et seq., and the Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq., in accordance with (g) below.

(e) In determining whether the property owner's investments in the property as a whole were reasonable and reflected reasonable expectations, the Department shall evaluate the following information:

1. Conditions at the time of the investment. That is, the investment shall have been made in pursuit of development that would likely have been legally and practically possible on the property, considering all constraints existing and reasonably ascertainable at the time of the investment. For example, if a property owner bought land containing a dune that is regulated under this chapter, it would not be reasonable to expect that the property could be developed without constraints. In determining conditions at the time of the investment, the Department shall consider, at a minimum, the following:
  - i. Existing zoning and other regulatory requirements and conditions;
  - ii. Historic landmarks or other historic or cultural resources;

- iii. The likelihood of obtaining other necessary approvals such as wastewater treatment approvals or approvals from other local, State or Federal agencies;
  - iv. Terrain and other site conditions, and/or environmental constraints, which could affect the potential uses of the property as a whole;
  - v. The existence of, or likelihood of obtaining, services to the property such as sewers or electricity; and
  - vi. Land uses on adjacent properties and in the area where the property is located;
- 2. Costs actually incurred in pursuit of development of the property as a whole;
  - 3. Costs incurred in furtherance of a lawful action. For example, if the property owner began the project without the necessary permits, the cost of defending against an enforcement action for this violation would not constitute a reasonable investment that reflects reasonable expectations;
  - 4. Costs relating only to the specific property as a whole that is the subject of the coastal permit application, and not including costs related to other properties; and
  - 5. Any other factor affecting the property or the property owner, which is related to the reasonableness of the investments, the expectations, and/or the proposed use of the property.

(f) In determining the minimum beneficial economically viable use of the property, the Department shall consider existing legal precedent at the time of the determination. A use shall not be excluded from consideration as a minimum beneficial economically viable use merely because it diminishes the value of the property as a whole, does not result in a profit, reduces the marketability of the property as a whole, or does not allow the property owner to recoup all reasonable investments identified under (e) above.

(g) In determining the environmental impacts of any minimum beneficial economically viable uses of the property and the consistency of those impacts with the goals of CAFRA, N.J.S.A. 13:19-1 et seq., the Waterfront Development Law, N.J.S.A. 12:5-1 et seq., and the Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq., in accordance with (d) above, the Department shall evaluate whether the minimum beneficial economically viable use would:

- 1. Adversely affect the Special Areas described at N.J.A.C. 7:7E-3;

2. Result in irreversible losses of values and functions provided by coastal resources and whether such losses could be mitigated; and

3. Adversely affect public health, safety and welfare, and wildlife and marine fisheries.

(h) The Department shall not approve a minimum beneficial economically viable use as a result of the reconsideration of the application of a substantive standard of N.J.A.C. 7:7E under this section if that use would cause any one of the following:

1. Irreversible losses of values and functions of the coastal resources that provide essential breeding, spawning, nesting, feeding, resting, or wintering habitats for marine fish and wildlife, including migratory birds, endangered species, and commercially and recreationally important wildlife. For the purposes of this section, "irreversible losses" means an alteration to the coastal resource that would eliminate one or more of the essential characteristics which provides the breeding, spawning, nesting, feeding, resting or wintering habitat for the species in question that could not be mitigated;

2. Irreversible losses in water quality, resulting in degradation of ground or surface waters, in violation of the Federal, State or local water quality standards; or

3. Irreversible losses of wetlands and/or State open waters, providing essential flood and storm damage protection by absorption, the storage of water during high runoff periods and the reduction of flood crests, resulting in creation of a public nuisance.

(i) A property owner may request a reconsideration of application of a substantive standard(s) of N.J.A.C. 7:7E only after:

1. The conclusion of any administrative and/or judicial appeal of the permit decision; and

2. A court has determined that the issuance, modification, or denial of a coastal permit without reconsideration would result in a taking of property without just compensation.

(j) A complete request for a reconsideration of N.J.A.C. 7:7E standards under (c) above shall include the following items:

1. A completed LURP application form indicating a request for a reconsideration and the type of permit being requested;

2. Documentation that the following public notice requirements have been met:

i. Verification as required under N.J.A.C. 7:7-4.2(a)3 that public notice has been provided to the clerk of the municipality, and as applicable under that paragraph, to the Pinelands

Commission; and

ii. Verification that a certified mail notice and an 8 1/2 by 11 inch copy of the site plan and completed LURP application form have been forwarded to the construction official of the municipality in which the proposed development that is the subject of the reconsideration would occur, to the planning board and environmental commissions of the county in which the proposed development would occur, and to all owners of real property, including easements as shown on the tax duplicate, within 200 feet of the property or properties on which the proposed development would occur, along with a certified list of all owners of real property, including easements as shown on the tax duplicate, within 200 feet. The list of property owners certified by the municipality shall be no more than one year old. The public notice shall follow the form provided by the Department, and shall state that a request for reconsideration has been submitted to the Department, that the request can be reviewed at the municipal clerk's office or at the Department, and that comments may be submitted to the Department within 15 days of receipt of the notice. This notice may be combined with the offer to sell the property required under (j)8 below;

3. An environmental impact statement or compliance statement, providing the information necessary for the Department to evaluate the environmental impacts of the proposed minimum beneficial economically viable use in accordance with (g) and (h) above;

4. Development plans showing the project that is proposed in order to provide a minimum beneficial economically viable use;

5. Document(s) showing when the property as a whole, as defined at N.J.A.C. 7:7-1.3, was acquired, the purchase price of the property as a whole and the instrument which documents the applicant's real property interest;

6. Document(s) showing the amount and nature and date of any investments made to maintain and/or develop the property as a whole, other than the purchase price;

7. The language of a proposed conservation restriction that meets the requirements of (n)2 below;

8. Documentation that the property has been offered for sale, in a letter following the form provided by the Department, to all owners of property, including easements as shown on the tax duplicate within 200 feet of the property as a whole, and to the land conservancies, environmental organizations, and governmental agencies on a list supplied by the Department. This documentation shall include the following:

- i. A copy of each letter that the property owner sends under this subsection;
- ii. All responses the property owner receives to the letters sent under this subsection. Each response shall be submitted to the Department within 15 days after the property owner's receipt of the response; and
- iii. A list, certified by the municipality, of all owners of real property within 200 feet of the property as a whole, including owners of easements as shown on the tax duplicate. The list of property owners certified by the municipality shall be no more than one year old;

9. The written offer of sale required under (j)8 above shall be sent by certified mail and shall:

- i. Indicate that the offer is open for a period of at least 90 calendar days;
- ii. Include a copy of a fair market value appraisal, performed by a State-licensed appraiser, that assumes that a minimum beneficial economically viable use of the property would be allowed;
- iii. Include full disclosure of the location on the property and of any of the Special Areas described at N.J.A.C. 7:7E-3; and
- iv. Indicate that a reconsideration of N.J.A.C. 7:7E standards to allow development of the property has been requested under this section;

10. A copy of a court determination that the Department's issuance, modification, or denial of a coastal permit would constitute a taking of property without just compensation; and

11. Documents showing that the property owner has concluded all administrative and judicial appeals of the Department's decision on the application for a coastal permit. Such documentation shall include the last of the following (submitted after the appeal period for the applicable decision has expired):

- i. A Department decision on the coastal permit application, made in accordance with the rules as strictly applied;

ii. A final decision issued by the Commissioner regarding the Department's decision on the coastal permit application; or

iii. Documentation that all appeals of any final decision issued by the Commissioner under (j)10ii above have been concluded.

(k) In the case where the Department initiates the reconsideration of application of the substantive standards of N.J.A.C. 7:7E under (c) above, the Department shall, upon initiation of the reconsideration process follow all steps described in (k)1 through 3 below. In the case where the property owner is requesting a reconsideration of application of the substantive standards, the Department shall upon initiation of the reconsideration process, follow the steps described in (k)1i, 1iii, 2 and 3 below:

1. Provide the following notifications:

- i. Publication in the DEP Bulletin;
- ii. In accordance with the requirements at N.J.A.C. 7:7-4.2(a)e; and
- iii. To those who provided comments on the previous application that is the subject of the reconsideration;

2. Include in the notice the applicant's name; project name, if applicable; project number; county and municipality of the project; and an executive summary describing the development that is the subject of the reconsideration; and

3. Provide a 15-day comment period, commencing from the date of publication of the notice in the DEP Bulletin.

(l) If the Department determines to approve a development upon reconsideration of the application of the substantive standards of N.J.A.C. 7:7E, the Department shall provide notice of the development that the Department proposes to allow under the reconsideration following the same procedures as described in (k)1i above except that the Department shall provide a 30-day comment period, commencing from the date of publication of the notice in the DEP Bulletin.

(m) The Department shall complete the written analysis required under (d) above, which shall incorporate its decision on the request for reconsideration of the application of N.J.A.C. 7:7E standards as follows:

1. For a request for reconsideration under (c) and (i) above, no later than 180 days after receiving a complete request that meets all requirements at (j) above; or
2. For a reconsideration initiated by the Department under (c) above, no later than 180 days from the publication of notice in the DEP Bulletin under (k) above.

(n) If the Department approves a development under reconsideration of the application of the substantive standards of N.J.A.C. 7:7E under (c) above, the approval shall, at a minimum:

1. Be the minimum relief necessary to enable the property owner to realize a minimum beneficial economically viable use of the property as a whole, consistent with constitutional standards; and
2. Ensure that any part of the property as a whole that the Department does not allow to be developed upon reconsideration of the substantive standards of N.J.A.C. 7:7E under (c) above will be protected from future development by a recorded conservation restriction.

#### **7:7-1.11 Severability**

If any section, subsection, provision, clause or portion of this chapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this chapter shall not be affected thereby.

## **SUBCHAPTER 2. ACTIVITIES FOR WHICH A PERMIT IS REQUIRED**

### **7:7-2.1 CAFRA**

(a) Subject to the interpretation and definition of certain statutory terms as provided at (b) below and subject to the exemptions identified at (c) below, a CAFRA permit shall be required for:

1. Any development located on a beach or dune;
2. A development located in the CAFRA area between the mean high water line of any tidal waters, or the landward limit of a beach or dune, whichever is most landward, and a point 150

feet landward of the mean high water line of any tidal waters or the landward limit of a beach or dune, whichever is most landward, that would result either solely or in conjunction with a previous development, in:

- i. A development if there is no intervening development that is either completed or under active construction as of July 19, 1994 between the proposed site of the development and the mean high water line of any tidal waters;
- ii. A residential development having three or more dwelling units if there is an intervening development that is either completed or under active construction as of July 19, 1994 between the proposed site of the development and the mean high water line of any tidal waters;
- iii. A commercial development having five or more parking spaces or equivalent parking area if there is an intervening development that is either completed or under active construction as of July 19, 1994 between the proposed site of the development and the mean high water line of any tidal waters; or
- iv. A public development or industrial development;

3. A development located in the CAFRA area between a point greater than 150 feet landward of the mean high water line or any tidal waters or the landward limit of a beach or dune, whichever is most landward, and a point 500 feet landward of the mean high water line of any tidal waters or the landward limit of a beach or dune, whichever is most landward, which is located within the boundaries of a municipality which meets the criteria of a "qualifying municipality" pursuant to section 1 of P.L. 1978, c.14 (N.J.S.A. 52:27D-178), or which is located within the boundaries of a city of the fourth class with a population of over 30,000 persons according to the latest decennial census, that would result, either solely or in conjunction with a previous development, in:

- i. A residential development having 25 or more dwelling units;
  - ii. A commercial development having 50 or more parking spaces or equivalent parking area;
- or

- iii. A public development or industrial development;

4. A development located in the CAFRA area beyond 500 feet landward of the mean high water line of any tidal waters or the landward limit of a beach or dune, whichever is most landward, and which is located within the boundaries of a municipality which meets the criteria



of a "qualifying municipality" pursuant to section 1 of P.L. 1978, c.14 (N.J.S.A. 52:27D-178), or which is located within the boundaries of a city of the fourth class with a population of over 30,000 persons according to the latest decennial census, that would result, either solely or in conjunction with a previous development, in:

- i. A residential development having 75 or more dwelling units;
- ii. A commercial development having 150 or more parking spaces or equivalent parking area;

or

- iii. A public development or industrial development; and

5. Except as otherwise provided above, a development in the CAFRA area at a point 150 feet landward of the mean high water line of any tidal waters or the landward limit of a beach or dune, whichever is most landward, that would result, either solely or in conjunction with a previous development in:

- i. A residential development having 25 or more dwelling units;
- ii. A commercial development having 50 or more parking spaces or equivalent parking area;

or

- iii. A public development or industrial development.

(b) The Department interprets its obligation and responsibility to regulate development as defined by CAFRA to include review of the potential impacts of any development, if at least part of that development is located within the area in which a CAFRA permit is required. Therefore, if any development requires a CAFRA permit, the Department will review all of the components of the development, not just those that triggered the regulatory thresholds of CAFRA. In addition, the Department will review all the components of a development that spans the zones in (a) above if the total development exceeds a regulatory threshold. The Department interprets the statutory intent as excluding developments with relatively minor impacts. In addition, the repair and maintenance of utilities within rights-of-way on beaches and dunes are not regulated development as defined at N.J.A.C. 7:7-1.3 provided that all disturbed areas are restored to their pre-disturbance condition. To that end, the following statutory terms are interpreted to mean the following, for the purposes of this section.

1. The method for determining whether an existing development is an intervening development is as follows:

i. For proposed developments other than single family home or duplex and/or accessory development as described in (b)1ii below, extend a line landward and perpendicular to the mean high water line from each of the widest shore-parallel points of the footprint of the existing development (see Appendix B, incorporated herein by reference). If the proposed development does not fall entirely within these lines, then the existing development is not considered intervening development.

ii. For a proposed single family home or duplex and/or accessory development (such as garages, sheds, pools, driveways, excluding shore protection structures) that is not part of a larger development, extend a line landward and perpendicular to the mean high water line from each of the widest shore-parallel points of the footprint of the existing development (see Appendix C, incorporated herein by reference). If the proposed single family home or duplex and/or accessory development extends beyond these lines more than 15 feet on either side or a cumulative total of 20 feet, then the existing development is not considered intervening development.

iii. Existing developments that may be considered intervening development include above-ground structures such as houses, garages, cabanas or bath houses which are fully enclosed and serviced by a municipal sewer system, and commercial, industrial or public buildings provided the above-ground structure received all necessary Federal, State and local approvals and was:

- (1) Completed or under active construction as of July 19, 1994;
- (2) Exempt from CAFRA; or
- (3) Constructed under a CAFRA permit.

iv. Existing developments that are not considered intervening development include shore protection structures, seawalls, bulkheads, retaining walls, gabions, revetments, fences, boardwalks, promenades, patios, decks, carports, prefabricated sheds without foundations, docks, piers, lifeguard stands, gazebos, swimming pools, utility lines, culverts, railroads, roadways, sewage pump stations, or seasonal or temporary structures associated with the tourism industry as defined at N.J.A.C. 7:7-1.3 or constructed under the coastal general permit for the construction of certain types of temporary and seasonal developments at hotels and motels,

commercial developments and multi-family residential developments of 75 units, N.J.A.C. 7:7-7.26.

2. If located in an area other than a beach or a dune, public development is not the following:

i. The maintenance, repair or replacement (including upgrade) of existing petroleum, sewage or natural gas pipelines, and associated pump stations and connection junctions, and electrical substations, located completely within paved roadways or paved, gravel, or cleared and maintained rights-of-way, provided that the replacement of sewage pipelines and associated pump stations does not result in an increase in the associated sewer service area;

ii. The maintenance, repair, modification, or replacement of sanitary system components other than pipelines and associated pump stations, including upgrading of systems from primary to secondary treatment, provided that an increase in capacity will not result;

iii. The construction, maintenance, repair or replacement (including upgrade) of water lines, telecommunication and cable television lines, including fiber optic cables, poles and transfer and/or switching stations associated with telecommunication lines, provided the transfer and/or switching station is located completely within paved roadways or paved, gravel, or cleared and maintained rights-of-way. This does not include the construction of telecommunication towers such as cellular telephone towers.

iv. The maintenance, repair or replacement of existing and functional railroads and related structures located completely within cleared and maintained rights-of-way;

v. The maintenance and repair of existing stormwater management facilities which receive, store, convey or discharge stormwater runoff;

vi. The construction of less than 1,200 linear feet of new stormwater pipes;

vii. The construction or expansion of educational facilities as defined at N.J.A.C. 7:7-1.3;

viii. The construction of seasonal or temporary structures related to the tourism industry as defined at N.J.A.C. 7:7-1.3; or

ix. The construction, maintenance, repair or replacement of power lines.

3. In addition to the activities identified at (b)2 above, if located more than 150 feet from the mean high water line of any tidal waters, or the landward limit of a beach or a dune, whichever is most landward, public development is not the following:

i. The construction of a new road, sanitary sewer pipeline, petroleum pipeline or natural gas pipeline of less than 1,200 feet in length or the extension of a road, sanitary sewer pipeline, stormwater management facility, petroleum pipeline or natural gas pipeline of less than 1,200 feet in length, not to exceed a cumulative total of 1,200 feet in any one municipality at any one site, unless the construction is located within a development requiring a CAFRA permit in which case it shall be considered part of the development for which a permit is required; or

ii. The construction of telecommunication towers such as cellular telephone towers.

4. Equivalent parking areas will be calculated at 270 square feet per parking space, including one half of the associated aisle area, excluding access drives. This calculation shall apply to both paved and unpaved parking areas.

5. A development that is used solely for the storage of food or other merchandise, excluding storage of agri-chemical and petroleum products, and that is not associated with any on-site manufacturing or industrial process and is not specifically included in the definition of industrial development at N.J.A.C. 7:7-1.3 is considered a “commercial development”.

6. Municipal or other government administrative, public works or emergency services buildings that are not specifically included in the definition of public development at N.J.A.C. 7:7-1.3 or parks which are publicly owned or controlled are considered commercial developments.

7. Churches, synagogues or other houses of worship are considered commercial developments.

8. Development or expansion of existing developments "either solely or in conjunction with a previous development" is described at (b)8i through iv below. “Previous development” includes developments that either were previously constructed after September 19, 1973 or developments that previously received a CAFRA permit which remains valid but the approved development has not yet been built. For the purposes of (b)8i, ii and iii below, contiguous parcels shall include, but not be limited to, those land areas which directly abut or are separated by a general access roadway or other right-of-way, including waterways, or those land areas which are part of a subdivision existing and under common ownership on or after September 19, 1973.

i. The construction of any residential or commercial development on contiguous parcels of

property, regardless of present ownership, where there is a proposed sharing of infrastructure constructed to serve those parcels including, but not limited to, roads, utility lines, drainage systems, open spaces or septic drain fields;

ii. The construction of any residential or commercial development on contiguous parcels of property which were under common ownership on or after September 1, 1973 (the effective date of CAFRA), regardless of present ownership, or any subdivision or resubdivision of a parcel of land which occurred after September 19, 1973;

iii. The construction of any residential or commercial development on contiguous parcels of property, where there is some shared pecuniary, possessory, or other substantial common interest by one or more individuals in the units;

iv. The addition of one or more parking spaces or dwelling units or equivalent to any existing dwelling units or parking spaces or equivalent parking area for which construction had commenced subsequent to September 19, 1973 where such addition, when combined with the existing dwelling units or parking area, results in a total exceeding the regulatory threshold. Any dwelling units or parking areas in existence on or before September 19, 1973 which have been determined by the Department to be exempt from the requirements of this subchapter due to on-site construction on or before September 19, 1973 will not be counted when determining if a new or expanded development exceeds the regulatory threshold.

(1) The addition of parking spaces by restriping is not regulated.

v. The total number of dwelling units or parking spaces in a new or expanded development need not be restricted to any single municipal tax block nor to any one period in time in order to require a permit;

vi. The construction of a development below the regulatory threshold as defined in this section, where such construction is part of a larger planned development in which the total development will exceed the regulatory threshold.

9. Commercial development not located on a beach or a dune and not located within 150 feet of the beach, dune or mean high water line unless there is an intervening development as described at (b)1 above, excludes development which:

i. Does not cause the number of parking spaces (either solely or in conjunction with the existing development) to exceed the regulatory threshold of the appropriate zone; or

ii. Does not propose development of any new parking spaces, regardless of whether the total number of existing parking spaces exceeds the regulatory threshold of the appropriate zone.

10. The elevating of an existing residential, commercial, industrial, or public building on pilings does not require a CAFRA permit, unless the elevating of the existing building is associated with an enlargement and such enlargement is not exempt under CAFRA pursuant to (c)4 or unless the elevating of the existing building involves excavation, filling, or grading on a beach or a dune. Additional parking spaces located under a building elevated in accordance with this paragraph are not counted toward the parking space or equivalent parking area limits at (a) above.

11. Residential developments which include the offsite construction of more than 1,200 linear feet of new sewer pipelines or roads require a CAFRA permit regardless of the number of dwelling units. For all other residential developments which are not located on a beach or dune, whether a CAFRA permit is required is based on the number of dwelling units proposed only and not the length of roadways or sewer pipelines on-site.

12. The classification or removal from classification of the municipality in which a development is located as a “qualifying municipality,” as defined at N.J.A.C. 7:7-1.3, affects the requirement for a CAFRA permit for such development as follows:

i. If construction of the development under a valid CAFRA permit has been started and the municipality in which the development is located either becomes classified or is removed from classification as a “qualifying municipality,” the permittee is obligated to comply with all conditions of the permit;

ii. If construction of the development under a valid CAFRA permit has not been started at a time when the municipality in which the development is located is classified as a “qualifying municipality” such that the development does not require a CAFRA permit under (a)3 or (4) above, the permittee need not comply with the conditions of the issued permit;

iii. If construction of the development is started in accordance with all necessary approvals at a time when the municipality in which the development is located is classified as a “qualifying municipality” such that the development does not require a CAFRA permit under (a)3 or (4) above, and if subsequently the municipality is removed from classification as a “qualifying municipality”, the Department shall not require a CAFRA permit for the development provided

construction continues to completion with no lapses in construction that cumulatively total one year or more;

iv. If site plan approval is obtained for the development pursuant to the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.) at a time when the municipality in which the development is located is classified as a “qualifying municipality” such that the development does not require a CAFRA permit under (a)3 or (4) above, and if subsequently the municipality is removed from classification as a “qualifying municipality”, the Department shall not, for a period of one year from the date that the municipality is removed from classification as a “qualifying municipality”, require a CAFRA permit for the development, provided construction is started within this one-year period and continues through completion with no lapses in construction that cumulatively total one year or more;

v. If preliminary subdivision approval is obtained for a residential development pursuant to the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.), and no subsequent site plan approval is required, at a time when the municipality in which the development is located is classified as a “qualifying municipality” such that the development does not require a CAFRA permit under (a)3 or (4) above, and if subsequently the municipality is removed from classification as a “qualifying municipality”, the Department shall not, for a period of one year from the date that the municipality is removed from classification as a “qualifying municipality”, require a CAFRA permit for the development, provided construction is started within this one-year period and continues through completion with no lapses in construction that cumulatively total one year or more;

vi. For the purposes of (b)12iii through v above, construction means having completed one of the following, as approved as part of the municipal site plan or subdivision approval:

- (1) The foundation for one of the buildings or structures;
- (2) The subsurface improvements for the roadways; or
- (3) The bedding for utilities.

vii. Development under (b)12iii through v above is limited to the specific project depicted on the approved site plan or for residential developments only, the specific project that was the subject of the subdivision approval, namely development of the subdivision which is consistent

with the lot coverage, use and density restrictions of the zoning ordinances that were in effect at the time of the subdivision approval or that were authorized by the subdivision approval.

(c) A CAFRA permit shall not be required for:

1. A development which received preliminary site plan approval pursuant to the "Municipal Land Use Law," P.L. 1975, c.291 (N.J.S.A. 40:55D-1 et seq.) or a final municipal building or construction permit on or before July 19, 1994, provided that construction began by July 19, 1997, and continues to completion with no lapses in construction activity of more than one year;

i. An exemption under this section is granted only for the specific project depicted on the approved site plan or described in the building or construction permit.

ii. Any development that required a permit pursuant to P.L. 1973, c.185 (N.J.S.A. 13:19-1 et seq.) prior to July 19, 1994 shall continue to require a CAFRA permit and shall not be exempted under this section.

iii. For purposes this paragraph, "construction" means having completed one of the following as approved as part of the site plan:

- (1) The foundation for one of the buildings or structures;
- (2) All of the subsurface improvements for roadways;
- (3) The installation of all of the bedding materials for utility lines; or
- (4) The installation of a well or septic system, for projects which are exempt based on receipt of a final municipal building or construction permit.

iv. To determine if construction of a development or part of a development began by July 19, 1997, the Department shall evaluate such proofs as may be provided by the applicant, including, but not limited to, the following: documentation that the local construction official has completed the inspection at N.J.A.C. 5:23-2.18(b)1i(2) or 2.18(b)1i(3) for foundations of buildings or structures; reports from the municipal engineer documenting inspections of road bed construction; or billing receipts documenting the completion of the above construction activities.

v. In the event the final municipal building or construction permit expired and the permit was renewed or a new permit was obtained for the same project, the development will remain exempt provided construction began by July 19, 1997. In cases where the municipal approval expired and was renewed or that a new permit was issued, the Department will require



documentation that the new or renewed permit authorized the same construction as the original permit, and that the currently authorized construction would not result in additional adverse impacts to any Special Areas as defined at N.J.A.C. 7:7E-3 that are greater than any adverse impacts associated with the development authorized before July 19, 1994, and the proposed construction is either 15 feet inshore of a bulkhead or no closer to the water than the original approval.

2. A residential development which received preliminary subdivision approval or minor subdivision approval pursuant to the "Municipal Land Use Law," P.L. 1975, c.291 (N.J.S.A. 40:55D-1 et seq.) on or before July 19, 1994 where no subsequent site plan approval is required, provided that construction began by July 19, 1997, and continues to completion with no lapses in construction activity of more than one year;

i. An exemption under this section is granted only for the specific project that was the subject of the subdivision approval, namely development of the subdivision which is consistent with the lot coverage, use and density restrictions of the zoning ordinances that were in effect at the time of the subdivision approval or that were authorized by the subdivision approval.

ii. Any development that required a permit pursuant to P.L. 1973, c.185 (N.J.S.A. 13:19-1 et seq.) prior to July 19, 1994 shall continue to require a CAFRA permit and shall not be exempted under this section.

iii. For purposes of this paragraph, "construction" means having completed one of the following as approved as part of the subdivision approval:

- (1) The foundation for one of the buildings or structures;
- (2) All of the subsurface improvements for roadways; or
- (3) The installation of all of the bedding materials for utility lines.

iv. To determine if construction of a development or part of a development began by July 19, 1997, the Department shall evaluate such proofs as may be provided by the applicant, including, but not limited to, the following: documentation that the local construction official completed the inspection at N.J.A.C. 5:23-2.18(b)1i(2) or 2.18(b)1i(3) for foundations of buildings or structures; reports from the municipal engineer documenting inspections of road bed construction; or billing receipts documenting the completion of the above construction activities.

3. The reconstruction of any development which was legally existing on and damaged subsequent to July 19, 1994 that is damaged or destroyed, in whole or in part, by fire, storm, natural hazard or act of God, provided that such reconstruction is in compliance with existing requirements or codes of municipal, State and Federal law; and further provided that such reconstruction does not result in:

- i. The enlargement or relocation of the footprint of the development; or
- ii. An increase in the number of dwelling units or parking spaces within the development.
- iii. A relocation landward or laterally may qualify for the exemption at (c)3 above if the Department determines, in writing, that such a relocation would result in less environmental impact than the in place reconstruction of damaged or destroyed development.
- iv. Any person requesting a determination concerning relocation landward shall follow the procedures for an exemption determination at (f)2 below.
- v. An increase in the area covered by buildings and/or asphalt or concrete pavement.

4. The enlargement of any building provided that such enlargement does not result in:

- i. The enlargement of the footprint of the development as defined at N.J.A.C. 7:7-1.3; or
- ii. An increase in the number of dwelling units or parking spaces associated with the building;

5. The construction of a patio, deck or similar structure at a residential development, provided such construction does not result in the grading, excavation, or filling of a beach or dune.

i. For the purposes of this paragraph, "similar structure" includes porches, balconies and verandas. The exemption for the construction of a patio, deck, porch, balcony or veranda only remains in effect as long as the patio, deck, porch, balcony or veranda remains used for the purpose that it was originally constructed. Further, the exemption shall not include the placement of any structure such as a pool, roof or enclosure with walls or windows on a patio, deck, porch, balcony or veranda. Such activities will require a CAFRA permit.

ii. For the purposes of this paragraph, the following shall be considered "similar structures" at a residential development, provided that their construction does not include the placement of pilings or placement of a structure on a beach, dune, or wetland: fences, flower boxes, gardens, a landscape wall (for example, railroad ties) no more than one foot in height (or a series of walls

not to exceed a cumulative total of one foot in height), satellite dishes and antennas, and wooden boardwalks and gravel or brick/paver block walkways;

iii. For the purposes of this paragraph, the following shall also be considered “similar structures” at a residential development, provided that their construction does not include the placement of pilings or placement of a structure on a beach, dune, wetland or coastal bluff: sheds (with a footprint of 120 square feet or less), open carports, gazebos, propane tanks properly anchored, and showers, spas, hot tubs and above ground swimming pools (not exceeding 500 square feet of surface area) which do not discharge to surface waters or wetlands.

iv. For the purposes of this paragraph, the construction of timber dune walkover structures constructed in accordance with Department specifications found at N.J.A.C. 7:7E, Coastal Zone Management rules shall be considered a “similar structure” at a residential development.

v. For the purposes of this paragraph, the following shall not be considered “similar structures” at a residential development: swimming pools, garages, retaining walls, bulkheads, revetments, driveways and associated parking areas, paved yard areas, or outbuildings, except as provided at (c)5iii above.

6. Services provided, within the existing public right-of-way, by any government entity which involve:

i. The routine reconstruction, substantially similar functional replacement, or maintenance or repair of public highways. The paving of an existing unpaved roadway is not considered to be a substantially similar functional replacement;

ii. Public highway lane widening, intersection and shoulder improvement projects (including new paving or repaving) which do not increase the number of travel lanes;

iii. Public highway signing, lighting, guide rail and other non-intrusive safety projects, including traffic control devices; or

iv. Re-striping of public highways and the addition of toll booths provided that these activities do not result in any increase in asphalt or concrete pavement.

7. Any development that has an existing, valid CAFRA permit dated prior to July 19, 1994 provided that construction, as defined at N.J.A.C. 7:7-2.1(c)1iii, begins prior to the expiration date of the permit and continues with no cumulative lapses in construction activity of more than one year.

8. The expansion of an existing, functional amusement pier, provided such expansion does not exceed the footprint of the existing, functional amusement pier by more than 25 percent, and provided such expansion is located in the area beyond 150 feet landward of the mean high water line, beach or dune, whichever is most landward.

(d) Any exemption based upon on-site construction, as defined at N.J.A.C. 7:7-2.1(c)1iii on or before September 19, 1973 expired on July 19, 1997.

(e) A development shall no longer be exempt from the requirement of obtaining a CAFRA permit if significant changes are made to the development which would void the approvals listed at (c)1 and 2 above, or which would result in additional impacts to Special Areas, as defined at N.J.A.C. 7:7E-3, which additional impacts are greater than the impacts associated with the originally exempt development.

(f) Development that is exempt from CAFRA requires no certification or approval from the Department, except as may be required by other programs administered by the Department. Any person who wishes may request from the Department a written determination of a development's exemption from the requirements of this subchapter.

1. For an exemption pursuant to (c)1 and 2 above, the following shall be submitted:

i. A folded copy of the approved site plan or subdivision plan, a copy of the resolution approving the site plan or subdivision, or a copy of the building permit and approved plan and soil conservation district approval where required;

ii. In the event that the final municipal building or construction permit expired and the permit was renewed or a new permit was obtained for the same project, the development will remain exempt provided construction began by July 18, 1997. To make such a determination, the Department will require documentation that the new permit authorized exactly the same construction as the original permit, such as a copy of the original building permit with approved plan and soil conservation district approval where required and a copy of the new building permit with approved plan depicting the exact development as the original;

iii. The fee specified at N.J.A.C. 7:7-10.4(e); and

iv. A completed LURP application form.

2. For an exemption pursuant to (c)3, 4, and 5 above the following shall be submitted:

i. Plans showing the existing structures and site conditions with locations and dimensions, and all proposed structures, filling, grading, excavation and clearing;

(1) For exemptions based on fire, storm, natural hazard or Act of God, the site plans submitted shall also indicate all preexisting structures to be rebuilt.

ii. Photographs of the site;

iii. The fee specified at 7:7-10.4(e); and

iv. A completed LURP application form.

3. For an exemption pursuant to (c)8 above, the following shall be submitted:

i. A description of the location of the amusement pier including county, municipality, lot(s) and block(s);

ii. A copy of a site plan showing the location of the existing, functional amusement pier and the proposed location of the expansion;

iii. Documentation concerning the size of the footprint of the existing functional amusement pier and the size of the proposed expansion;

iv. Photographs of the site;

v. The fee specified at N.J.A.C. 7:7-10.4(e); and

vi. A completed LURP application form.

### **7:7-2.2 Wetlands**

(a) Wetlands permits are required for all activities in coastal wetlands delineated and mapped pursuant to the Wetlands Act of 1970 including, but not limited to:

1. The cultivation and harvesting of naturally occurring agricultural or horticultural products.

This provision shall not apply to the continued production of commercial salt hay or other agricultural crops on lands utilized for these purposes on or before April 13, 1972;

2. The excavation of an individual mooring slip;

3. The maintenance or repair of bridges, roads, highways, railroad beds or the facilities of any utility or municipality. This provision shall not apply to emergency repairs necessitated by a natural disaster or a sudden and unexpected mechanical, electrical or structural failure. Written

notification of such repairs shall be provided to the Program within seven days after their initiation;

4. The construction of catwalks, piers, docks, landings, footbridges and observation decks;
5. The installation of utilities;
6. Excavation of boat channels and mooring basins;
7. The construction of impoundments;
8. The construction of sea walls;
9. The diversion or appropriative use of water;
10. The use of pesticides, except those applied to the skin or clothing for personal use;
11. Driving or causing to pass over or upon wetlands, any mechanical conveyance which may alter or impair the natural contour of the wetlands or the natural vegetation; and
12. Filling, excavation or the construction of any structure.

(b) The following activities are prohibited on regulated wetlands:

1. Placing, depositing or dumping any solid waste, garbage, refuse, trash, rubbish or debris;
2. Dumping or discharging treated or untreated domestic sewage or industrial wastes, either solid or liquid;
3. Applying any pesticide on areas containing significant stands of high vigor *Spartina alterniflora* (Saltmarsh cordgrass), *Zizania aquatica* (Wildrice), *Typha* sp. (Cattail), and *Scirpus americanus* (common threesquare) as shown generally on wetlands maps;
4. The storage or disposal of pesticides;
5. The application of persistent pesticides.

(c) The Wetlands Order promulgated by the Commissioner of Environmental Protection in April 1972, any amendments thereto, and these rules shall be applicable only in those areas shown waterward of the upper wetland boundary on the following wetlands maps:

1. Middlesex County:  
574-2082  
574-2088  
581-2082

581-2088

581-2100

581-2106

581-2112

581-2118

588-2076

588-2082

588-2106

588-2112

588-2118

595-2070

595-2076

595-2082

595-2088

595-2094

595-2106

602-2064

602-2070

602-2076

602-2082

602-2088

602-2094

602-2100

602-2106

609-2094

609-2100

609-2106

## 2. Monmouth County:

455-2160

455-2166  
462-2160  
462-2166  
462-2172  
462-2154  
469-2160  
469-2172  
469-2178  
476-2166  
476-2172  
476-2178  
483-2172  
490-2166  
490-2172  
490-2178  
497-2166  
497-2172  
518-2184  
532-2178  
539-2154  
539-2160  
539-2166  
539-2172  
539-2178  
539-2184  
539-2190  
546-2154  
546-2160  
546-2172  
546-2178



546-2184  
546-2190  
553-2160  
553-2166  
553-2172  
553-2178  
553-2184  
553-2190  
560-2166  
560-2172  
560-2178  
560-2184  
560-2190  
567-2172  
567-2718  
567-2184  
567-2190  
574-2118  
574-2124  
574-2160  
574-2166  
574-2172  
574-2178  
574-2184  
574-2190  
581-2112  
581-2118  
581-2124  
581-2130  
581-2136

581-2142

581-2148

581-2154

581-2160

581-2166

581-2184

588-2118

588-2124

588-2130

588-2136

588-2142

588-2184

595-2178

595-2184

### 3. Ocean County:

245-2088

245-2094

245-2100

245-2106

252-2076

252-2088

252-2094

252-2100

252-2106

252-2112

259-2070

259-2076

259-2082

259-2088

259-2094  
259-2100  
259-2106  
259-2112  
259-2118  
266-2070  
266-2076  
266-2082  
266-2088  
266-2094  
266-2100  
266-2106  
266-2112  
266-2118  
273-2076  
273-2088  
273-2094  
273-2100  
273-2112  
273-2118  
273-2124  
280-2088  
280-2094  
280-2100  
280-2106  
280-2112  
280-2118  
280-2124  
280-2130  
287-2094

287-2100

287-2106

287-2112

287-2124

287-2130

294-2100

294-2106

294-2112

294-2118

294-2124

294-2130

294-2136

301-2112

301-2118

301-2124

301-2130

301-2136

301-2142

308-2118

308-2124

308-2130

308-2136

308-2142

315-2124

315-2130

315-2136

315-2142

315-2148

322-2124

322-2130

322-2136  
322-2142  
322-2148  
329-2124  
329-2130  
329-2136  
329-2142  
329-2148  
329-2154  
336-2124  
336-2130  
336-2142  
336-2148  
336-2154  
343-2130  
343-2148  
343-2154  
343-2160  
350-2130  
350-2136  
350-2148  
350-2154  
357-2124  
357-2130  
357-2136  
357-2142  
357-2154  
357-2160  
359-2160  
364-2130

364-2136  
364-2142  
364-2160  
371-2136  
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371-2148  
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385-2142  
385-2148  
385-2160  
392-2136  
392-2142  
392-2148  
392-2154  
392-2160  
399-2124  
399-2130  
399-2136  
399-2142  
399-2148  
399-2154  
399-2160  
406-2118  
406-2124  
406-2130  
406-2148  
406-2154

406-2160  
413-2118  
413-2148  
413-2154  
413-2160  
420-2142  
420-2148  
420-2154  
420-2160  
420-2166  
427-2142  
427-2148  
427-2154  
427-2160  
434-2148  
434-2154  
434-2160  
434-2166  
441-2148  
441-2154  
441-2160  
441-2166  
441-2172  
448-2142  
448-2148  
448-2154  
448-2160  
448-2166  
448-2172  
455-2154

462-2166

462-2154

462-2172

469-2154

#### 4. Burlington County:

252-2064

259-2046

259-2052

259-2058

259-2064

259-2070

266-2034

266-2040

266-2046

266-2052

266-2058

266-2064

266-2070

273-2022

273-2028

273-2034

273-2040

273-2046

273-2052

273-2058

273-2064

273-2070

273-2076

280-2004



280-2010

280-2016

280-2022

280-2028

280-2040

280-2046

280-2052

280-2058

287-2004

287-2010

287-2016

287-2040

287-2046

294-2040

413-1896

413-1902

420-1890

420-1896

420-1932

420-1938

420-1944

427-1926

427-1932

427-1938

434-1908

434-1914

434-1920

434-1926

434-1932

448-1944

448-1950

448-1956

462-1968

469-1974

476-1980

476-1986

483-1986

483-1992

490-1986

490-1992

#### 5. Atlantic County:

161-1980

161-1986

161-1992

161-2004

168-1956

168-1962

168-1968

168-1974

168-1980

168-1986

168-1992

168-1998

168-2004

168-2010

168-2016

168-2022

168-2028

168-2034

175-1974

175-1980

175-1986

175-1992

175-1998

175-2004

175-2010

175-2016

175-2022

175-2028

175-2034

175-2040

182-1980

182-1986

182-1992

182-1998

182-2004

182-2010

182-2016

182-2022

182-2028

182-2034

182-2040

182-2046

182-2052

189-1974

189-1980

189-1986

189-1992

189-1998

189-2022  
189-2028  
189-2034  
189-2040  
189-2046  
189-2052  
189-2058  
196-1974  
196-1980  
196-1986  
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196-2052  
196-2058  
196-2064  
196-2070  
203-1980  
203-1986  
203-2040  
203-2046  
203-2052  
203-2058  
203-2064  
203-2070  
203-2076  
210-1974  
210-1980  
210-1986  
210-2040

210-2046  
210-2052  
210-2058  
210-2064  
210-2070  
210-2076  
210-2082  
210-2088  
217-1974  
217-1980  
217-1986  
217-2040  
217-2046  
217-2052  
217-2058  
217-2064  
217-2070  
217-2076  
217-2082  
217-2088  
217-2094  
224-1980  
224-2052  
224-2058  
224-2064  
224-2070  
224-2082  
224-2088  
224-2094  
231-2058

231-2064  
231-2070  
231-2076  
231-2082  
231-2088  
231-2094  
231-2100  
238-2058  
238-2064  
238-2070  
238-2076  
238-2082  
238-2088  
238-2094  
245-2046  
245-2052  
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252-2070  
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259-2046  
259-2052  
259-2058

259-2064

259-2070

266-2022

266-2028

266-2034

266-2040

273-2016

273-2026

273-2022

273-2028

273-2034

280-2004

280-2010

280-2016

280-2022

287-1998

287-2004

287-2010

287-2040

#### 6. Cape May County:

035-914

035-1920

035-1926

035-1932

035-1938

042-1914

042-1920

042-1926

042-1932

042-1938

042-1944

049-1914

049-1926

049-1932

049-1938

049-1944

049-1950

056-1914

056-1920

056-1932

056-1938

056-1944

056-1950

056-1956

063-1938

063-1944

063-1950

063-1956

063-1962

070-1920

070-1926

070-1944

070-1950

070-1956

060-1962

070-1968

077-1920

077-1926

077-1932



077-1950

077-1956

077-1962

077-1968

084-1926

084-1932

084-1938

084-1950

084-1956

084-1962

084-1968

091-1932

091-1938

091-1944

091-1956

091-1962

091-1968

091-1974

091-1980

098-1932

098-1938

098-1944

098-1950

098-1962

098-1968

098-1974

098-1980

098-1986

105-1932

105-1938

105-1944  
105-1968  
105-1974  
105-1980  
105-1986  
112-1932  
112-1938  
112-1944  
112-1950  
112-1956  
112-1968  
112-1974  
112-1980  
112-1986  
112-1992  
119-1926  
119-1932  
119-1938  
119-1944  
119-1950  
119-1874  
119-1980  
119-1986  
119-1992  
126-1926  
126-1932  
126-1938  
126-1944  
126-1950  
126-1956

126-1980  
126-1986  
126-1992  
126-1998  
133-1926  
133-1932  
133-1986  
133-1992  
133-1998  
133-2004  
140-1926  
140-1932  
140-1974  
140-1980  
140-1992  
140-1998  
140-2004  
140-2010  
147-1980  
147-1986  
147-1992  
147-1998  
147-2004  
147-2010  
154-1980  
154-1986  
154-1992  
154-1998  
154-2004  
154-2010

154-2016

161-1962

161-1968

161-1974

161-1980

161-1986

161-1992

161-1998

161-2004

161-2010

161-2016

161-2022

168-1956

168-1962

168-1968

168-1974

168-1980

168-1986

168-1992

168-1998

168-2016

168-2022

#### 7. Cumberland County:

119-1926

126-1860

126-1866

126-1896

126-1902

126-1908

126-1914  
126-1920  
126-1926  
133-1854  
133-1860  
133-1866  
133-1872  
133-1878  
133-1884  
133-1890  
133-1896  
133-1902  
133-1914  
133-1920  
133-1926  
140-1854  
140-1860  
140-1866  
140-1872  
140-1878  
140-1884  
140-1890  
140-1896  
140-1902  
140-1908  
140-1914  
140-1926  
147-1848  
147-1854  
147-1860

147-1866

147-1872

147-1878

147-1884

147-1890

147-1896

147-1902

147-1908

154-1836

154-1842

154-1848

154-1854

154-1860

154-1866

154-1872

154-1878

154-1884

154-1896

154-1902

154-1908

161-1818

161-1824

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161-1836

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161-1896  
161-1902  
161-1908  
161-1914  
168-1812  
168-1818  
168-1824  
168-1830  
168-1836  
168-1842  
168-1848  
168-1854  
168-1902  
168-1908  
168-1914  
175-1812  
175-1818  
175-1824  
175-1830  
175-1836  
175-1842  
175-1848  
175-1896  
175-1902  
175-1908  
175-1914  
182-1800  
182-1806

182-1812

182-1818

182-1824

182-1830

182-1836

182-1842

182-1896

182-1902

182-1908

182-1914

189-1794

189-1800

189-1806

189-1812

189-1818

189-1824

189-1830

189-1890

189-1902

196-1782

196-1788

196-1794

196-1800

196-1806

196-1812

196-1818

196-1824

196-1830

196-1836

196-1842



196-1890

196-1896

203-1782

203-1788

203-1794

203-1800

203-1806

203-1812

203-1818

203-1824

203-1836

203-1842

203-1890

210-1782

210-1788

210-1794

210-1800

210-1836

217-1782

217-1788

217-1794

217-1836

224-1788

224-1794

224-1800

#### 8. Salem County:

196-1782

196-1788

203-1776

203-1782

203-1788

210-1776

210-1788

217-1764

217-1770

217-1776

217-1782

217-1788

224-1752

224-1758

224-1764

224-1770

224-1776

224-1782

224-1788

224-1794

224-1800

231-1752

231-1758

231-1764

231-1770

231-1776

231-1782

231-1788

238-1752

238-1758

238-1764

238-1770

238-1776

238-1782

245-1752

245-1758

245-1764

245-1770

245-1776

245-1782

245-1752

252-1758

252-1764

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252-1776

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252-1788

259-1752

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259-1764

259-1770

259-1776

259-1782

259-1788

259-1794

259-1800

266-1758

266-1764

266-1770

266-1776

266-1782

266-1788

266-1794

266-1800

273-1746

273-1752

273-1758

273-1764

273-1776

273-1782

273-1788

273-1794

280-1746

280-1752

280-1758

280-1764

180-1770

280-1776

280-1782

280-1788

280-1794

287-1746

287-1752

287-1764

287-1770

287-1776

287-1782

287-1788

294-1746

294-1752

294-1764

294-1770

294-1776

294-1782

294-1788

294-1794

301-1764

301-1770

301-1776

301-1782

301-1788

301-1794

308-1770

308-1776

308-1782

315-1764

315-1770

315-1776

315-1800

315-1806

322-1770

322-1788

322-1794

322-1800

329-1770

329-1776

329-1782

329-1788

329-1794

329-1800

336-1770

336-1776

336-1788

336-1794

343-1782

343-1788

343-1794

9. Gloucester County:

315-1800

315-1806

322-1794

322-1800

329-1794

329-1800

329-1806

329-1818

329-1824

336-1788

336-1794

336-1800

336-1806

336-1812

336-1818

336-1860

343-1782

343-1788

343-1794

343-1800

343-1806

343-1824

343-1848

343-1854

343-1860

350-1794

350-1800

350-1806

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350-1860

350-1878

357-1794

357-1806

357-1812

357-818

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364-1806

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364-1824

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364-1836

364-1842

364-1848

364-1854

364-1860

364-1872

364-1878

371-1848

371-1854

371-1860

371-1872

371-1878

378-1866

#### 10. Camden County:

364-1878

371-1872

371-1878

378-1866

378-1872

413-1896

413-1902

420-1890

420-1896

#### 11. Mercer County:

476-1980

476-1986

483-1980

483-1986



483-1992

490-1974

490-1980

490-1986

### **7:7-2.3 Waterfront development**

(a) The waterfront area regulated under this subchapter is divided into three sections, and will vary in width in accordance with the following rules:

1. Within any part of the Hackensack Meadowland Development District delineated at N.J.S.A. 13:17-4.1, the area regulated by this section shall include any tidal waterway of this State and all lands lying thereunder, up to and including the mean high water line.

2. Within the "coastal area" defined by section 4 of CAFRA (N.J.S.A. 13:9-4), the regulated waterfront area shall include any tidal waterway of this State and all lands lying thereunder, up to and including the mean high water line.

3. In all other areas of the State (that is in those areas outside of the "coastal area" defined by CAFRA and outside of the Hackensack Meadowlands Development District), the regulated waterfront area shall include any tidal waterway of this State and all lands lying thereunder, up to and including the mean high water line, and an adjacent upland land areas extending landward of the mean high water line to the first paved public road, railroad or surveyable property line existing on September 26, 1980 generally parallel to the waterway, provided that the landward boundary of the upland area shall be no less than 100 feet and no more than 500 feet landward of the mean high water line.

(b) This subchapter shall apply to all man-made waterways and lagoons subject to tidal influence.

(c) The following development activities will require a permit in that portion of the waterfront area at or below (outshore of) the mean high water line:

1. The removal or deposition of sub-aqueous materials (for example, excavation, dredging or filling).

2. The construction or alteration of a dock (fixed or floating), wharf, pier (including covered or enclosed structures such as gazebos or sheds located on or above the decking of the dock, wharf or pier), bulkhead, breakwater, groin, jetty, seawall, bridge, piling, boat lift, mooring dolphin, pipeline, cable, or other similar structure.

3. The mooring of a floating home for more than 10 consecutive days. Floating homes in use within the waters of this state prior to June 1, 1984 shall not require a permit. (See N.J.A.C. 7:7-2.1(b) for definition of floating home.)

4. The installation of temporary aids to navigation by any person, if they remain in place for more than 10 consecutive days.

(d) A permit shall be required for the construction, reconstruction, alteration, expansion or enlargement of any structure, or for the excavation or filling of any area, any portion of which is in the waterfront area as defined in (a) above, with the exceptions listed below:

1. In the waterfront area defined in (a)3 above, the construction, alteration, expansion or reconstruction of an individual single family dwelling unit or addition to such unit, if constructed more than 100 feet landward of the mean high water line;

2. In the waterfront area defined in (a)3 above, the reconstruction, conversion, alteration or enlargement of any existing structure located more than 100 feet landward of the mean high water line, provided that no change in land use results, and that enlargements do not exceed 5,000 square feet;

3. In the waterfront area defined in (a)3 above, minor additions to or changes in existing structures or manufacturing operations that do not result in adverse environmental impacts to Special Areas defined at N.J.A.C. 7:7E-3, provided the additions is located in an existing cleared area of the site, and is set back a minimum if 15 feet landward of the mean high water line, where such changes or additions do not result in a change in the present land use of the site;

4. The repair, replacement, renovation, or reconstruction, in the same location and size of the preexisting structure, of any legally existing dock, wharf, pier, bulkhead or building that appears on the applicable Tidelands Map adopted by the Tidelands Resource Council (base map photography dated 1977/1978) or that appears on the applicable New Jersey Coastal Wetlands maps promulgated by the Department pursuant to the Wetlands Act of 1970 (base map

photography dated 1971, 1972) or that received a Waterfront Development permit subsequent to the date of the photograph provided that the repair, replacement, renovation, or reconstruction, in the same location and size of the preexisting structure, and does not increase the size of the structure and the structure is used solely for residential purposes or for the docking of or servicing of pleasure vessels;

5. The repair, replacement, renovation, or reconstruction, in the same location and size of the preexisting structure, of any legally existing floating dock, mooring raft or similar temporary or seasonal improvement or structure that appears on the applicable Tidelands Map adopted by the Tidelands Resource Council (base map photography dated 1977/78), or that appears on the applicable New Jersey Coastal Wetlands photographs promulgated by the Department pursuant to the Wetlands Act of 1970 (base map photography dated 1971, 1972), or received a Waterfront Development permit subsequent to the date of the photograph provided that the repair, replacement, renovation, or reconstruction is in the same location and size of the preexisting structure, and does not exceed in length the waterfront frontage of the parcel of real property to which it is attached and is used solely for the docking of servicing of pleasure vessels; and

6. The redecking and replacement of bridge surfaces provided there is no change in width, length or height.

(e) Those portions of a dock or pier proposed to be constructed landward of the mean high water line and in the coastal zone may be subject to the permit-by-rule at N.J.A.C. 7:7-7.2(a)5 and 6.

(f) Any person proposing to undertake or cause to be undertaken any development or activity in or near the waterfront area may request in writing a determination that the proposal is not subject to the requirements of this subchapter on the basis that the proposed development site is located outside the waterfront area, or that the proposed development does not require a permit under (d) above.

1. The requesting party shall provide the Department with two copies of a map depicting the project site in a scale of not less than 1:2,400 (one inch equals 200 feet) and depicting the mean high water line, and with a project description. When the applicability determination request is

based on a proposed facility's location in accordance with (a)3 above, the map shall also depict that property line as it is depicted on the official local tax map as of September 26, 1980, and shall graphically depict the proposed project.

(g) A Waterfront Development permit is required for the filling of any lands formerly flowed by the tide, if any filling took place after 1914 without the issuance of a tidelands instrument by the Department of Environmental Protection and Tidelands Resource Council or their predecessor agencies, even where such lands extend beyond the landward boundary of the upland area defined in (a) 3 above, or up to and including the mean high water line in the areas defined in (a) 1 and (2) above.

1. A Waterfront Development permit application submitted under this subsection must be submitted in conjunction with an application for a tidelands instrument.

(h) A Waterfront Development permit shall not be required for any development or activity in the upland area defined in (a)3 above and in manmade waterways and lagoons for which on-site construction, excluding site preparation, was in progress on or prior to September 26, 1980. For the purpose of this section, "construction, excluding site preparation" does not include clearing vegetation, bringing construction materials to the site, site grading or other earth work associated with preparing a site for construction or structures. For the purposes of this section, "construction, excluding site preparation" does encompass improvements which include, but are not limited to, paved roads, curbs, and storm drains.

1. Any person who believes that a proposed development is exempt from the requirements of this subchapter due to on-site construction may request in writing a determination of exemption from the Department in accordance with (g)2 below.

2. Exemptions shall be applied for and considered upon submission of information sufficient for the Department to determine that the physical work specified in (g)1 above necessary to begin the construction of the proposed development, was actually performed prior to September 26, 1980 in the area defined in (a)3 above.

i. Any lapse in construction activity of more than one year may be cause for denial of an exemption request, or where previously exempted, it may be cause for revocation of such

exemption, by the Department.

ii. A finding that a proposed development is exempt from the requirements of this subchapter shall apply only to the development as conceived and designed prior to September 26, 1980.

Any modification which expands or substantially changes the exempted development shall require a permit.

## **Subchapter 3. Pre-Application Review**

### **7:7-3.1 Purpose**

(a) A pre-application review is an optional service especially recommended for major development. Pre-application meetings are however, mandatory for coastal permit applications involving the installation of submarine cables in the Atlantic Ocean. At this review the Department will discuss apparent strengths and weaknesses of the proposed development, as well as the procedures and policies that would apply to the particular development. The review is intended to provide guidance and does not constitute a commitment to approve or deny a permit application for the development.

### **7:7-3.2 Request for a pre-application review**

(a) Potential applicants for major projects, other than the installation of submarine cables in the Atlantic Ocean, are encouraged to request a pre-application review with the Department at the earliest opportunity. A request for a pre-application review shall be made in writing and shall include a conceptual proposal for the proposed development.

1. The conceptual proposal shall include:

- i. A written description of the site and the proposed development including the dimensions, number, and uses of proposed structures;
- ii. Maps indicating the site's location and rough internal plan of development; and
- iii. A tax lot and block designation of the site and a United States Geological Survey quadrangle map or county road map showing the site.

(b) Potential applicants for the installation of submarine cables in the Atlantic Ocean shall schedule the pre-application review early in the design process. A request for a pre-application review shall be made in writing and include a written description of the proposed project along with a National Ocean and Atmospheric Administration (NOAA) nautical chart depicting potential cable routes in relationship to existing cable routes. All pre-application review requests for the installation of submarine cables shall be submitted to the Manager of the Department's Bureau of Coastal Regulation, P.O. Box 439, Trenton, New Jersey, 08625-0439.

(c) The Department shall, within 10 days of receipt of such request, schedule a pre-application conference. Alternatively, the Department may suggest a telephone conversation if only a small number of relatively straightforward issues need discussion. A pre-application review will not be considered a declaration of intent to submit an application to the Department

(d) For pre-application conferences involving the installation of submarine cables in the Atlantic Ocean, written notice of the pre-application meeting shall be provided by the potential applicant to the organizations listed at (d)1 through 7 below, a minimum of 15 days prior to the date of the scheduled meeting. The written notice shall include the date, time and location of the pre-application meeting and a copy of the applicable NOAA nautical chart depicting the proposed cable route.

1. Garden State Seafood Association;
2. National Fisheries Institute;
3. North Atlantic Clam Association,
4. Rutgers Cooperative Extension;
5. New Jersey Shellfisheries Council;
6. New Jersey Marine Fisheries Council; and
7. Commercial Fishing Communications Association.

### **7:7-3.3 Discussion of information requirements**

(a) The Department shall discuss the information, including the level of detail and areas of emphasis, which must be included in a permit application for the proposed development to allow

the Department to review the application if one is submitted. This does not preclude the Department from requesting additional information based upon review of the formal application submittal.

(b) The Department shall also make available to the potential applicant current information on nearby projects in the Department's files. This information may be incorporated, by reference, in the applicant's EIS if agreed to by the Department.

#### **7:7-3.4 Memorandum of record**

(a) After the pre-application review, the Department shall, upon request, prepare a written memorandum of record or policy compliance checklist summarizing the discussion of the proposed development, the apparent sensitivity of the land and water features of its site, and the level of detail and the areas of emphasis necessary in the information that would be required as part of an application.

(b) The memorandum of record shall be mailed to the potential applicant within 20 days of the pre-application review. If an application is submitted, a copy of the memorandum of record or policy compliance checklist shall be included.

(c) The memorandum of record shall not be construed as a decision of the Department and shall not have any binding effect on the final decision of the Department on any permit application.

### **SUBCHAPTER 4. PERMIT REVIEW PROCEDURE**

#### **7:7-4.1 General**

(a) The provisions of CAFRA, the Wetlands Act of 1970, and the Waterfront Development Law are supplemental to other laws, including the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq., P.L. 1975, Chapter 291). Early consultation with the Department by a prospective applicant can avoid unnecessary duplication and delay in development review at the state and local levels for the same development, if applications for proposed developments are processed

at the same time at the State and local levels.

(b) Applicants for projects which require review or approval of a county-wide or area-wide planning agency or development, transportation or improvement authority shall consult with that agency on a regular basis to insure that the project and any changes to it are acceptable.

(c) The 90 Day Construction Permit Law (N.J.S.A. 13:1D-29 et seq.) establishes certain uniform permit review requirements for five types of construction permits issued by the Department, including CAFRA, Wetlands Act of 1970 and Waterfront Development permits. This chapter incorporates and is consistent with those requirements.

## **SUBCHAPTER 4. PERMIT REVIEW PROCEDURE**

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(a) The provisions of CAFRA, the Wetlands Act of 1970, and the Waterfront Development Law are supplemental to other laws, including the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq. P.L. 1975, Chapter 291). Early consultation with the Department by a prospective applicant can avoid unnecessary duplication and delay in development, if applications for proposed developments are processed

(b) Applicants for projects which require or approval of a country-wide or area-wide planning agency or development, transportation or improvement authority shall consult with that agency on a regular basis to insure that the project and any changes to it are acceptable.

(c) The 90 Day Construction Permit Law (N.J.S.A. 13:1D-29 et seq.) establishes certain uniform permit review requirements for five types of construction permits issued by the Department, including CAFRA, Wetlands Act of 1970 and Waterfront Development permits. This chapter incorporates and is consistent with those requirements.

### **7:7-4.2 Application contents**



(a) Individual waterfront development, wetland and CAFRA permit application submissions shall comply with (a) through (f) below. Individual CAFRA permit applicants must also provide public notice in the newspaper of an application submission to the Department in accordance with N.J.A.C. 7:7-4.3, Newspaper notice of application submission and availability of application for examination by the public. The submission requirements for the coastal general permits are found at N.J.A.C. 7:7-7.3, Application procedure for a coastal general permit authorization.

1. A completed LURP application form for the type of permit being applied for;

2. A check, money order, or government voucher made payable to the “Treasurer, State of New Jersey-Environmental Services Fund” in the amount of the appropriate fee as set forth at N.J.A.C. 7:7-10;

3. Verification (white certified mailing receipt or other written receipt is required) that three complete copies of the application package have been submitted to the clerk of the municipality in which the proposed development would occur, including a letter requesting that the clerk distribute one copy to the planning board and one copy to the environmental commission. The third copy shall be maintained in the clerk’s office.

i. Applications for CAFRA permits within the Pinelands Preservation Area or Protection Area must also contain verification that a complete copy of the application package has been submitted to the Pinelands Commission.

ii. Applications for a waterfront development permit for installing a submarine cable or sand mining in the ocean must also contain verification that a certified mail notice (white mailing receipt or other written receipt is acceptable) and a copy of the site plan and completed LURP application form have been forwarded to the organizations listed at (a)3ii(1) through (7) below. The site plan referred to in this subsection shall be a NOAA nautical chart depicting the proposed cable route or limits of the proposed sand mining area. The language of the public notice shall read as found at (a)4 below and a copy of the public notice shall be included in the application to the Department.

(1) Garden State Seafood Association;

(2) National Fisheries Institute;

(3) North Atlantic Clam Association,

- (4) Rutgers Cooperative Extension;
- (5) New Jersey Shellfisheries Council;
- (6) New Jersey Marine Fisheries Council; and
- (7) Commercial Fishing Communications Association.

4. Verification that a certified mail notice (white mailing receipt or other written receipt is acceptable) and a copy of the site plan and completed LURP application form have been forwarded to the construction official of the municipality in which the proposed development would occur, to the planning board and environmental commission of the county in which the proposed development would occur, and to all owners of real property, including easements as shown on the tax duplicate, within 200 feet of the property or properties on which the proposed development would occur, along with a list certified by the municipality, of all owners of real property, including easements as shown on the tax duplicate, within 200 feet. The list of property owners certified by the municipality shall be no more than one year old. Exceptions to the required notice to all owners of real property within 200 feet of the property or properties on which the proposed development would occur are found at (a)4i through iv below. The site plan referred to in this subsection need not include a full set of plans, but must depict the proposed development in relationship to existing site conditions. This plan may be on an 8 1/2 inch by 11 inch sheet of paper provided it generally depicts the proposed development and the general and site specific location. The public notice shall read as follows and a copy shall be included in the application to the Department:

"This letter is to provide you with legal notification that an application will be submitted to the New Jersey Department of Environmental Protection, Land Use Regulation Program for a permit for the development shown on the enclosed plan.

The complete permit application package can be reviewed at either the municipal clerk's office or by appointment at the Department's Trenton office. The Department of Environmental Protection welcomes comments and any information that you may provide concerning the proposed development and site. Please submit your written comments within 15 days of receiving this letter to:

New Jersey Department of Environmental Protection

Land Use Regulation Program

PO Box 439

501 East State Street

Trenton, New Jersey 08625-0439

attn: (Municipality in which property is located) Section Chief";

i. Notice to all owners of real property, including easements as shown on the tax duplicate, within 200 feet of the property or properties on which the proposed development would occur is not required for individual CAFRA applications at the time the application is submitted. Instead notice shall be provided in accordance with the notice requirements for a public hearing or for a public comment period, whichever is applicable. The notice requirements for a public hearing are set forth at N.J.A.C. 7:7-4.5(f). The notice requirements for a public comment period are set forth at N.J.A.C. 7:7-4.5(g) (for general permit application requirements see N.J.A.C. 7:7-7.3).

ii. Notice to all owners of real property, including easements as shown on the tax duplicate, within 200 feet of the property or properties on which the proposed development would occur is not required at the time an application is first submitted for a Waterfront Development or Wetlands permit, if a public hearing will be held pursuant to N.J.A.C. 7:7-4.5(a). Notice shall instead be provided in accordance with the requirements for notice of a public hearing set forth at N.J.A.C. 7:7-4.5(f).

iii. A waterfront development or wetlands permit application for a linear development of one-half mile or more in length, or a shore protection development including beach nourishment, beach and dune maintenance, or dune creation of one-half mile or more in length shall be subject to public notice in the official newspaper of the municipality or in a newspaper of general circulation in the municipality if there is no official newspaper(s). This newspaper notice shall be published as a display advertisement of at least 4 inches in width. Such an application shall also include verification that a certified mail notice (white mailing receipt or other written receipt is acceptable) and a copy of the site plan and completed LURP application form have been forwarded to all owners of real property, including easements as shown on the tax duplicate,

within 200 feet of a proposed above ground structure related to the linear development or shore protection development such as a pump station or treatment plant, groin, bulkhead, revetment or gabion, rather than to all owners of real property, including easements as shown on the tax duplicate, within 200 feet of the property or properties on which the proposed development would occur. Such an application shall also contain a list, certified by the municipality, of all owners of real property, including easements as shown on the tax duplicate, within 200 feet of an above ground structure. The list of property owners certified by the municipality shall be no more than one year old. The site plan referred to in this subsection need not include a full set of plans, but must depict the proposed development in relationship to existing site conditions. This plan may be on an 8 1/2 inch by 11 inch sheet of paper provided it generally depicts the proposed development and the general and site specific location. The language of the public notice shall read as found at (a)4 above and a copy shall be included in the application to the Department;

iv. For a Waterfront Development or wetlands application, for additional development proposed on the site of an existing industrial facility of at least 100 acres in size or park facility of at least 50 acres in size, the Department may at its discretion eliminate, modify or reduce the requirement for individual notice to owners of real property, including easements as shown on the tax duplicate, depending on the scope, location and anticipated impacts of the proposed development. For example, an applicant proposing to construct a salt dome or guard shack at an industrial facility located greater than 500 feet from adjacent properties would be required to provide notice in a newspaper of general circulation instead of notifying all owner's of real property, including easements as shown on the tax duplicate within 200 feet. Similarly, an applicant proposing to construct tennis courts located on one side of a 200 acre park facility would be required to notice only those property owners within the vicinity of the proposed tennis court.

5. Photographs showing the specific location of the proposed development taken from a minimum of four different locations and labeled as to orientation.

6. All coastal permit applications shall include the State plane coordinates for a point at the approximate center of the site, except as provided at (a)6i and ii below. The accuracy of the State plane coordinates shall be within 50 feet of the actual center point of the site. For

assistance in determining the State plane coordinates for a site, contact the Department's Geographic Information (GIS) Office at (609)777-0672.

- i. State plane coordinates are not required as part of an application for development at a single family home or duplex lot that is not part of a larger development.
- ii. For a linear development or shore protection development including beach nourishment, beach and dune maintenance or dune creation, the State plane coordinates shall be provided in accordance with (a)6ii(1) or (2) below.

(1) For a linear development of one-half mile or more in length, or a shore protection development including beach nourishment, beach and dune maintenance or dune creation of one-half mile or more in length, the State plane coordinates shall include the coordinates for the end points of the development and the coordinates for points located at 1,000 foot intervals along the entire length of the development; or

(2) For a linear development of less than one-half mile in length, or shore protection development including beach nourishment, beach and dune maintenance or dune creation of one-half mile or less, the State plane coordinates shall include the coordinates for the end points of the development.

7. Fifteen copies of development plans. (Plans must be folded to no larger than 8 1/2 inches by 11 inches in size.)

- i. For CAFRA and Waterfront Development applications for activities occurring landward of the mean high water line, and for Wetlands applications for activities other than catwalks, docks and piers:

(1) The set of plans must include, but not be limited to, the following information:

(A) All existing structures, roads, utilities, topography, vegetation, and coastal and freshwater wetlands, and any proposed structures, filling, grading, excavation, clearing, roads, utilities, sewers, landscaping and lighting, and soil erosion and sediment control devices.

(B) Any additional information specified in the "Checklist for Administrative Completeness for Waterfront Development, Tidal Wetlands, and CAFRA".

(2) Plans for any development consisting of more than one single family dwelling or duplex must be signed and sealed by a Professional Engineer or Land Surveyor. Plans for activities proposed on public park lands may be prepared, signed and sealed by a State Certified

Landscape Architect instead of a Professional Engineer or Land Surveyor.

ii. For Waterfront Development applications for activities occurring below the mean high water line and for Wetlands applications for catwalks, docks or piers:

(1) The set of plans must include, but not be limited to, the following information specified in the "Checklist for Administrative Completeness for Waterfront Development, Tidal Wetlands, and CAFRA":

(A) The lot;

(B) All existing waterfront structures (piers, bulkheads, pilings, etc.) on the lot and all immediately adjacent lots;

(C) Locations and dimensions of structures, lots, wetlands, mean high water line, upland property, road and utilities;

(D) The proposed work area and construction/development area clearly labeled and showing all distances and dimensions;

(E) The general site location of the development, which may be on a county or local road map or an insert from a U.S. Geological Survey topographic quadrangle map;

(F) The scale of the survey or map, and a north arrow;

(G) The name of the person who prepared the plan and the date it was prepared;

(H) The name of the applicant, lot and block number, and municipality, leaving a margin of one inch on the top and left hand sides of the plan; and

(I) The location of upper and lower wetlands boundary. The "upper" wetlands boundary refers to the upland or landward limit of wetlands, and the "lower" wetlands boundary refers to the waterward limit of wetlands.

(2) Dredging plans must show the area to be dredged, existing depth, proposed depth, adjacent depths, the amount of material to be dredged, the method of dredging, the exact location of the dredge material dewatering and disposal site by municipal block and lot, and the means of containing spoils. A dredge material analysis may also be required.

(3) Dock plans must show channel location, depths at mean low water outshore of the dock for a distance of at least 100 feet (excluding lagoons), location and orientation of proposed mooring areas, mooring area depths at mean low water, including the method, time and date of soundings, cross sections of the dock including height and width of any wetland crossing(s).

(4) Development plans for activities in an area subject to a tidelands instrument shall be prepared and sealed by a professional engineer or land surveyor, and must depict the limits of the Tidelands instrument. All activities in areas except man-made lagoons are subject to this requirement. Development plans for activities in man-made lagoons do not have to be prepared by a professional engineer, unless required by N.J.S.A. 45:8-27 et seq.

8. Copies of an Environmental Impact Statement (EIS) or Compliance Statement, prepared in accordance with N.J.A.C. 7:7-6, as follows:

i. CAFRA permit applications shall include 15 copies. The applicant may submit either 15 complete copies with all attachments and appendices or may submit five complete copies of the EIS along with 10 additional copies, one of which shall have appended thereto only an archaeological survey, if appropriate; and one of which shall have appended thereto only a traffic analysis if appropriate.

ii. Waterfront Development and Wetlands applications shall include 10 copies of a Compliance Statement with the Rules on Coastal Zone Management, N.J.A.C. 7:7E, prepared in accordance with N.J.A.C. 7:7-6. This Statement of Compliance shall address all coastal rules applicable to the proposed project;

9. Applications for development in an area under the jurisdiction of Pinelands Commission must also submit either a Certificate of Filing, Notice of Filing, a Certificate of Completeness, or resolution approving an application for public development from the Pinelands Commission along with the other required application materials; and

10. Any additional information requested by the Department to clarify or provide further information regarding information already submitted on the proposed development.

(b) Waterfront Development and Wetlands applications shall also include a copy of any tidelands instrument previously approved for the property in question. Permit applications will not be accepted for filing without verification that a tidelands instrument has been previously issued, applied for, or is unnecessary for the site.

(c) Development plans for activities in an area which requires a tidelands instrument, shall be prepared by a professional surveyor or professional engineer licensed by the State of New Jersey and shall depict the limits of the areas for which the tidelands instrument will be sought.

(d) An application for a Waterfront Development or Wetlands permit proposing the discharge of dredge or fill material shall also constitute an application for a State Water Quality Certificate under Section 401 of the Federal Clean Water Act.

(e) If the regulated activity would occur in wetlands as defined by N.J.A.C. 7:7E-3.27(a) or intertidal and subtidal shallows as defined by N.J.A.C. 7:7E-3.15(a), then the applicant may submit a mitigation plan as part of the application.

1. The Department requires an approved mitigation proposal as a condition prior to engaging in a regulated activity in a wetland or intertidal and subtidal shallow, except as provided at (e)2 or 3 below.

2. The Department may, upon request of the applicant, determine that a mitigation plan will not be required as part of a permit application for the construction of catwalks, piers, docks, landings, footbridges, and observation decks provided that the applicant shows, to the satisfaction of the Department, that vehicles and equipment will not be placed on the wetlands in order to construct the structure and that the structure will comply with the acceptability conditions provided by N.J.A.C. 7:7E-4.5. The Department may however, require mitigation notwithstanding the applicant's compliance with the terms of this paragraph, if it has determined, on an individual case basis, that mitigation is necessary.

3. Mitigation is not required for certain types of development in intertidal and subtidal shallows as specified at 7:7E-3.15(g).

4. All mitigation proposals submitted pursuant to this section shall comply with N.J.A.C. 7:7E-3B.2, Tidal Wetland and Intertidal and Subtidal Shallows Mitigation Proposals.

(f) All application sets including charts, plans and other large documents submitted to the Department pursuant to this chapter shall be collated and folded flat to a size that is suitable for interoffice distribution.



#### **7:7-4.3 Newspaper notice of application submission and availability of application for examination by the public**

(a) Applicants for CAFRA individual permits shall give public notice that a CAFRA application has been filed with the Department and that a public hearing may be requested in the official newspaper of the municipality or in a newspaper of general circulation in the municipality if there is no official newspaper. The newspaper notice shall be a display advertisement a minimum of four inches in width and shall read as follows:

“Take Notice that an application has been submitted to the New Jersey Department of Environmental Protection, Land Use Regulation Program for a CAFRA permit for the development described below:

APPLICANT:

PROJECT NAME:

PROJECT DESCRIPTION:

PROJECT STREET ADDRESS:

BLOCK:

LOT:

MUNICIPALITY:

COUNTY:

The CAFRA permit application can be reviewed at either the municipal clerk's office or by appointment at the Department's Trenton office. A 30 day public comment period or a fact-finding public hearing will be held on this application in the future. A public hearing will be held only if the Department determines that, based on public comment or a review of the project, its scope and environmental impact, additional information is necessary to assist in its review or evaluate potential impacts and that this information can only be obtained by providing an opportunity for a public hearing. Individuals may request that the Department hold a public hearing on this application. Requests for a public hearing shall be made in writing within 15 days of the date of this notice and shall state the specific nature of the issues proposed to be raised at the hearing. Hearing requests should be sent to:

New Jersey Department of Environmental Protection  
Land Use Regulation Program  
P.O. Box 439  
501 East State Street  
Trenton, New Jersey 08625-0439  
Attn: (Municipality in which the property is located) Section Chief."

(b) The newspaper notice shall be published after the CAFRA application has been filed with the Department. Proof of the public notice shall be submitted to the Department within 10 calendar days of filing of the CAFRA application. Proof of the public notice shall specify the date and newspaper in which the notice was published, and shall include a copy of the newspaper notice.

1. If proof of the public notice is not received within this time frame, the application shall be deficient pursuant to N.J.A.C. 7:7-4.4 for a minimum of 20 days after notice has been published, and until proof of the public notice is received by the Department.

(c) Copies of all coastal permit applications, and subsequent submissions, will be available for public scrutiny by interested persons in the offices of the Department in Trenton by appointment and in the municipal clerk's office during normal business hours. On a case-by-case

basis, the Department may make arrangements for copies of coastal permit applications and subsequent submissions to be available for public review in a municipality outside normal business hours.

(d) The Department shall publish in the "DEP Bulletin" a report of the receipt of each new application and each agency action on applications currently before it. In conjunction with notice provided under N.J.A.C. 7:7-4.8, publication in the "DEP Bulletin" constitutes constructive notice to all interested persons of Department actions on coastal permits, except as provided in N.J.A.C. 7:7-4.8.

#### **7:7-4.4 Initial review of applications**

(a) For all CAFRA applications:

1. Within 20 working days of receipt of the application, the Department shall take one of the following actions:

i. Assign an agency project number, accept the application, and issue notification to the applicant that the application is complete for public hearing or for a public comment period and a public hearing or public comment period shall be scheduled within 15 days;

ii. Assign an agency project number, accept the application and issue notification to the applicant that additional information is required to correct deficiencies; or

iii. Return the application, explaining why it is unacceptable for filing, and return the filing fee upon notification that the applicant does not intend to reapply.

2. Within 15 days of the receipt of any additional information submitted pursuant to (a)1ii above, the Department shall issue notification to the applicant stating whether the amended application is considered complete.

i. Such notification shall either:

(1) Specify which deficiencies still remain;

(2) If no public hearing is to be held, declare the application complete for public comment;

or

(3) If a public hearing is to be held, declare the application complete for the public hearing.

ii. Copies of information submitted in response to deficiency letters shall be submitted to the municipal clerk and at the discretion of the Department, be distributed by the applicant to the same persons to whom copies of the initial application were distributed.

3. If an application is not complete for public comment or for the public hearing within 90 days of a request for additional information, the Department may, 30 days after providing written notice by certified mail to the applicant, cancel and return the application, unless the applicant can demonstrate good cause for the delay in completing the application. In such cases, a 90 day extension in which to submit the information will be granted.

i. All fees submitted with an application that is cancelled shall be non-refundable but will be applied toward re-submission of the application provided that such re-submission is within one year of the date of cancellation.

ii. A re-submission of a previously cancelled application more than one year after the date of cancellation shall be accompanied by the appropriate fee pursuant to N.J.A.C. 7:7-10.

iii. A re-submission of an application shall be required to meet the application requirements specified at N.J.A.C. 7:7-4.2.

4. Once an application is declared complete for final review in accordance with N.J.A.C. 7:7-4.6 the Coastal Zone Management rules, N.J.A.C. 7:7E, in effect at that time will govern the staff review of the permit application.

5. Once an application for which a public hearing will be held has been declared complete for public hearing, the Department shall prepare a preliminary analysis of the project, based upon the staff analysis and recommendations, as well as upon comments from other agencies to whom copies of the application were distributed and comments from interested persons.

i. To be assured of incorporation in the preliminary analysis, such comments must be received within 20 days after the applicant has been notified of completeness for public hearing.

ii. The Department will provide copies of the preliminary analysis to the applicant and to any person requesting a copy.

(b) For all Waterfront Development and Coastal Wetland applications:

1. Within 20 working days of receipt of the application, the Department shall take one of the following actions:

- i. Assign an agency project number, accept the application, and issue notification that the application is complete for final review effective the date of receipt of the application;
  - ii. Assign an agency project number, accept the application, and issue notification to the applicant that the application is complete for public hearing and a public hearing shall be scheduled within 15 days;
  - iii. Assign an agency project number and accept the application but request in writing that the applicant submit additional information within a specific period of time to assist in its review. In such cases, the application will not be considered complete for final review until all additional information has been received and the application deemed complete;
  - iv. Assign an agency project number and accept the application but request in writing that the applicant submit additional information within a specific period of time to assist in its review and inform the applicant that the Department has determined that additional information which can only be obtained by public hearing is also necessary to assist in its review; or
  - v. Return the application, explaining why it is unacceptable for filing, and return the filing fee upon notification that the applicant does not intend to reapply.
2. Within 15 days of receipt of any additional information submitted pursuant to b(iii) or (iv) above, the Department shall issue notification to the applicant stating whether the amended application is considered complete for public hearing or final review.
- i. Such notification shall either:
    - (1) Specify which deficiencies still remain;
    - (2) If no public hearing is to be held, declare the application complete for final review; or
    - (3) If a public hearing is to be held, declare the application complete for the public hearing.
  - ii. Copies of information submitted in response to deficiency letters shall be submitted to the municipal clerk and at the discretion of the Department, be distributed by the applicant to the same persons to whom copies of the initial application were distributed.
3. Applications for which a public hearing will be held shall go on to the public hearing phase of the permit review process. For Wetland and Waterfront Development applications for which a public hearing will not be held, and which are complete for final review, the 90 day review period established pursuant to the 90 Day Construction Permit Law, N.J.S.A. 13:1D-29 et

seq., shall begin on the date of receipt of the additional information which completed the application.

4. If an application is not complete for final review or for the public hearing within 90 days of a request for additional information, the Department may, 30 days after providing written notice by certified mail to the applicant, cancel and return the application, unless the applicant can demonstrate good cause for the delay in completing the application. In such cases, a 90 day extension in which to submit the information will be granted.

i. All fees submitted with an application that is cancelled shall be non-refundable but will be applied toward resubmission of the application provided that such resubmission is within one year of the date of cancellation.

ii. A re-submission of a previously cancelled application more than one year after the date of cancellation shall be accompanied by the appropriate fee pursuant to N.J.A.C. 7:7-10.

iii. A re-submission of an application shall be required to meet the application requirements specified at N.J.A.C. 7:7-4.2.

5. Once an application is declared complete for final review in accordance with N.J.A.C. 7:7-4.6 the Coastal Zone Management rules, N.J.A.C. 7:7E in effect at that time will govern the staff review of the permit application.

6. Once an application for which a public hearing will be held has been declared complete for public hearing, the Department shall prepare a preliminary analysis of the project, based upon the staff analysis and recommendations, as well as upon comments from other agencies to whom copies of the application were distributed and comments from interested persons.

i. To be assured of incorporation in the preliminary analysis, such comments must be received within 20 days after the applicant has been notified of completeness for public hearing.

ii. The Department will provide copies of the preliminary analysis to the applicant and to any person requesting a copy.

#### **7:7-4.5 Public hearings and public comment periods**

(a) The Department may, in its discretion, hold a fact-finding public hearing on a coastal permit application when the Department determines that, based on public comment or a review of the project, its scope and environmental impact, additional information is necessary to assist in

its review or evaluate potential impacts and that this information can only be obtained by providing an opportunity for a public hearing.

(b) If a hearing is to take place, the Department shall, within 15 days of declaring the application complete for public hearing, set a date, place, and time for the public hearing and shall so notify the applicant.

1. The date for the hearing shall be not later than 60 days after the application has been declared complete for public hearing.

2. The hearing shall, if possible, be held in the municipality in which the development is proposed.

(c) In the event the Department does not hold a public hearing on a CAFRA permit application, the Department will provide for a 30-day comment period in accordance with (d) below.

(d) If a public comment period is to occur, the Department shall within 15 days of declaring the application complete for public comment, set a date for the commencement of the 30 day public comment period and shall so notify the applicant.

1. The date for the start of the public comment period shall be no later than 60 days after the application has been declared complete for public comment.

(e) The Department shall publish a notice announcing the date, place, and time of the public hearing or the date of commencement of the public comment period in the DEP Bulletin.

(f) The applicant shall give public notice of the public hearings, pursuant to section 7.1 of the Municipal Land Use Law (N.J.S.A. 40:55D-12), with the exception of (f)2 and 3 below. Any newspaper notice shall be a display advertisement a minimum of four inches in width.

1. Such notice shall describe the proposed development, identify its agency number, announce the date, place, and time of the of the public hearing on the application and indicate that comments on the application may be made to the Land Use Regulation Program, New Jersey

Department of Environmental Protection, PO Box 439, Trenton, New Jersey 08625-0439 at or within 15 days after the public hearing, or until the application is declared complete for final review (see N.J.A.C. 7:7-4.6), whichever occurs last.

2. If the development is a linear development (as defined at N.J.A.C. 7:7-1.3) of one-half mile or more in length, or a shore protection development including beach nourishment, beach and dune maintenance, or dune creation of one-half mile or more in length, the applicant shall give public notice containing the information described in (f)1 above in the official newspaper of the municipality or in a newspaper of general circulation in the municipality if there is no official newspaper, and to owners of real property including easements as shown on the tax duplicate, within 200 feet of a proposed above ground structure related to the proposed linear development or shore protection development, such as a pumping station, treatment plant, groin, bulkhead, revetment, gabion, or dune walkover, rather than to all owners of real property, including easements, within 200 feet of the entire linear development as shown on the tax duplicate.

3. For additional development proposed on the site of an existing industrial facility of at least 100 acres in size, or park facility of at least 50 acres in size, the Department may at its discretion eliminate or reduce the requirement for individual notice to owners of real property, including easements as shown on the tax duplicate, depending on the scope, location and anticipated impacts of the proposed development. For example, an applicant proposing to construct a salt dome or guard shack at an industrial facility located greater than 500 feet from adjacent properties would be required to provide notice in a newspaper instead of notifying all owners of real property, including easements as shown on the tax duplicate, within 200 feet. Similarly, an applicant proposing to construct tennis courts located on one side of a 200 acre park facility would be required only to notice owners of real property, including easements as shown on the tax duplicate within the vicinity of the proposed tennis courts.

4. Notice as described at (f)1 above, shall also be given to the clerk of the municipality in which the proposed development will occur the environmental commission and planning board of the municipality in which the proposed development will occur, and the environmental commission and planning board of the county in which the proposed development will occur.

5. Proof of notice shall be submitted to the Department at least three days prior to the public hearing. Proof of notice to property owners of real property, including easements as shown on



the tax duplicate, and public agencies shall consist of the white mail certified receipts or other written receipts. Proof shall also include a list, certified by the municipality, of all owners of real property, including easements as shown on the tax duplicate. The list of property owners certified by the municipality shall be no more than one year old. Proof of publication in the newspaper shall specify the date and newspaper in which notice was published, and shall include a copy of the newspaper notice. In cases where proof of publication is unavailable three days prior to the hearing, the applicant may submit a notarized affidavit stating that notice of the hearing has been published, and specifying the date and newspaper in which the notice was published.

(g) The applicant shall give public notice of the public comment period pursuant to Section 7.1 of the Municipal Land Use Law (N.J.S.A. 40:55D-12 with the exception of (g)2, 3 and 4 below). Any newspaper notice shall be a display advertisement a minimum of four inches in width.

1. The newspaper notice shall describe the proposed development, identify its agency number, and announce the commencement date of the public comment period on the application and indicate that comments on the application shall be submitted to the Land Use Regulation Program, New Jersey Department of Environmental Protection, PO Box 439, Trenton, New Jersey 08625-0439 within 30 days of the start of the public comment period.

2. All notice other than the newspaper notice required at (g)1 above, shall consist of a site plan, letter, and copy of the completed LURP application form.

i. The site plan referred to in (g)2 above need not include a full set of plans, but must depict the proposed development in relationship to existing site conditions. This plan may be on an 8 1/2 inch by 11 inch sheet of paper provided it generally depicts the proposed development and the general and site specific location.

ii. The letter shall read as follows:

"This letter is to provide you with legal notification that an application has been submitted to the New Jersey Department of Environmental Protection, Land Use Regulation Program for a permit for the development shown on the enclosed plan and that a 30 day public comment period will commence on <DATE>.

The complete permit application package can be reviewed at either the municipal clerk's office or by appointment at the Department's Trenton office. The Department of Environmental Protection welcomes comments and any information that you may provide concerning the proposed development and site. Your written comments must be submitted to the Department by the end of the 30 day comment period. Comments should be sent to:

New Jersey Department of Environmental Protection  
Land Use Regulation Program  
PO Box 439  
501 East State Street  
Trenton, New Jersey 08625-0439  
attn: (Municipality in which property is located) Section Chief";

3. If the development is a linear development (as defined at N.J.A.C. 7:7-1.3) of one-half mile or more in length, or a shore protection development including beach nourishment, beach and dune maintenance, or dune creation of one-half mile or more in length, the applicant shall give public notice containing the information described in (g)1 above in the official newspaper of the municipality or in the newspaper of general circulation in the municipality if there is no official newspaper, and shall give public notice containing the information described in (g)2 above to owners of real property, including easements as shown on the tax duplicate within 200 feet of a proposed above ground structure related to the proposed linear development or shore protection development, such as a pumping station, treatment plant, groin, bulkhead, revetment, gabion, or dune walkover, rather than to all owners of real property, including easements as shown on the tax duplicate within 200 feet of the entire linear development.

4. For additional development proposed on the site of an existing industrial facility of at least 100 acres in size, or park facility of at least 50 acres in size, the Department may at its discretion eliminate, modify or reduce the requirement for individual notice to owners of real property, including easements as shown on the tax duplicate, depending on the scope, location

and anticipated impacts of the proposed development. For example, an applicant proposing to construct a salt dome or guard shack at an industrial facility located greater than 500 feet from adjacent properties would be required to provide notice in a newspaper instead of notifying all owners of real property, including easements as shown on the tax duplicate, within 200 feet. Similarly, an applicant proposing to construct tennis courts located on one side of a 200 acre park facility would be required only to notice owners of real property, including easements as shown on the tax duplicate within the vicinity of the proposed tennis courts.

5. Notice containing the information described in (g)2 above of the public comment period shall also be given to the clerk of the municipality in which the proposed development will occur, the environmental commission and planning board of the municipality in which the proposed development will occur, and the environmental commission and planning board of the county in which the proposed development will occur.

6. Proof of notice shall be submitted to the Department at least 10 days prior to the commencement of the public comment period. Proof of notice to owners of real property, including easements as shown on the tax duplicate, and public agencies shall consist of white certified mail receipts or other written receipts. Proof of publication in the newspaper shall specify the date and newspaper in which notice was published, and shall include a copy of the newspaper advertisement. Proof shall also include a list certified by the municipality of all owners of real property, including easements as shown on the tax duplicate. The list of property owners certified by the municipality shall be no more than one year old.

(h) The Department shall maintain a copy of the hearing transcript and of all written comments received for public inspection in its Trenton Office.

(i) The applicant shall provide a court reporter, bear the cost of the hearing, including but not limited to court reporter attendance fees, transcript costs, and hearing room rental, and provide the Department with the original transcript.

(j) The presiding official at the public hearing shall have broad discretion with respect to oral and written presentations by interested persons. This discretion shall be exercised to allow every

person the opportunity to speak, to reasonably limit the length of individual testimony, and insure the maintenance of an orderly forum. At the conclusion of statements of interested persons, the applicant shall be afforded the opportunity to respond to the statements offered by interested persons.

(k) Any interested person may submit information and comments, in writing, concerning the application and the preliminary analysis at or within 15 days after the hearing or during the public comment period. Additional comments received after this date will also be included in the application file and may be considered by the Department in the review process if relevant to the application.

#### **7:7-4.6 Final review of the application**

(a) In the case of CAFRA applications, the Department shall, within 15 days after the public hearing, if one is held, or 15 days after the close of the public comment period if no hearing is held, either declare the application complete for final review or issue notification to the applicant that additional information is required for the complete review of the application. The request for additional information shall be made in writing, or if made at the hearing, confirmed in writing.

- i. If a public hearing was held and no additional information is required, the date of the public hearing shall be the date the application was considered complete for final review.
- ii. If no public hearing was held, and no additional information is required, the date of the close of the public comment period shall be the date the application was considered complete for final review.

(b) The Department shall, within 15 days of the receipt of any required additional information, either declare the application complete for final review effective the date of receipt of the additional information or issue notification to the applicant that the application is still not complete for final review and specify which deficiencies remain.

(c) In the case of Waterfront Development and Coastal Wetland applications for which a

public hearing was held, the application shall be declared complete for final review on the date of the public hearing.

(d) If an application for which a public hearing or public comment period has been held is not complete for review within 90 days of a request for additional information, the Department may, 30 days after providing written notice by certified mail to the applicant, cancel and return the application, unless the applicant can demonstrate good cause for the delay in completing the application. In such cases, further extensions in which to submit the information will be granted. Failure to submit the information by the mutually agreed date of extension will be cause for the Department to cancel the application without further notice.

1. All fees submitted with an application that is cancelled shall be non-refundable but will be applied toward re-submission of the application provided that such re-submission is made within one year of the date of cancellation.

2. A re-submission of a previously cancelled application more than one year after the date of cancellation shall be accompanied by the appropriate fee pursuant to N.J.A.C. 7:7-10.

3. A re-submission of an application shall be required to meet the application requirements specified at N.J.A.C. 7:7-4.2.

(e) Notwithstanding any other provision if these rules, no application shall be declared complete for final review unless and until the applicant has possession of all tidelands instrument required for the riparian land. The Department may at its discretion issue a permit decision prior to receipt of the tidelands instrument, provided that a complete application for the tidelands instrument has been received by the DEP, Bureau of Tidelands Management.

#### **7:7-4.7 Timetable for permit decisions**

(a) The Department shall act on CAFRA applications within 60 days of the public hearing, or within 60 days of the close of the public comment period, unless additional information was required, in which case the Department shall act on the application within 90 days of the date it was declared complete for final review.

(b) The Department shall act on all Wetland and Waterfront Development applications within 90 days after the application was declared complete for final review.

(c) The timeframes for a decision prescribed under this section may be extended for a 30-day period by the mutual consent of the applicant and the Department provided that the Department or the applicant request from the other such an extension prior to the expiration date for the approval, conditioning or disapproval of such an application.

(d) If the Department fails to act within the prescribed time period, the application shall be deemed to have been approved, subject to the standard conditions set forth in N.J.A.C. 7:7-1.5, with the exception of any application for a permit which has not received all required tidelands instruments setting forth the person's right to use or occupy the land.

#### **7:7-4.8 Publication of the permit decision**

The Department shall notify the applicant of the permit decision by mail, shall publish notice of the permit decision in the DEP Bulletin, and shall also notify interested persons who specifically requested notice.

#### **7:7-4.9 Withdrawal, resubmission and amendment of applications**

(a) An applicant may withdraw an application at any time in the application review process. All fees submitted with such applications are non-returnable following the conclusion of the initial 20 working day review period except that the fee may be credited for the same project within one year of the date of the notice of withdrawal.

(b) If an application is denied, the applicant may resubmit an application for a revised project of the same or reduced scope on the same site within one year without additional fees. The resubmitted application will be treated as a new application, although references may be made to the previously submitted application. An applicant who wishes to appeal the denial, and at the same time revise the application may do so in accordance with procedures in N.J.A.C. 7:7-5.1.

(c) Permit applications may be amended at any time as part of the permit review process.

Copies of amendments and amended information shall be distributed by the applicant to the clerk of the municipality in which the proposed development will occur, the environmental commission and planning board of the municipality in which the proposed development will occur, and the environmental commission and planning board of the county in which the proposed development will occur.

(d) Amended applications submitted within 30 days of the deadline for final decision must be accompanied by a request to extend the decision date by 30 days or by a period agreed to by the applicant and the Department.

#### **7:7-4.10 Requests for modifications**

(a) If a permittee proposed a change in the development authorized under a coastal permit during the term of validity of the permit pursuant to N.J.A.C. 7:7-1.5, the permittee shall submit, in accordance with this section, a request for a modification of the permit. In addition, to address a construction related problem, a permittee who has completed construction shall submit a request for a modification of a permit within one year of completion of construction. The criteria for modification of a waterfront development permit are found at (a) through (e) below; for modification of a coastal wetlands permit, at (f) below; and for modification of a CAFRA permit at (g) and (h) below. The criteria for modification of a coastal general permit are found at N.J.A.C. 7:7-7.3A, Requests for modifications of coastal general permits.

(b) Any request for a modification of a CAFRA permit or waterfront development permit for development located landward of the mean high water line that meets either (b)1 or 2 below shall be treated as a request for a new permit. In that case, the permittee shall comply with the permit application requirements at N.J.A.C. 7:7-4. The permittee shall apply for a new permit if:

1. The proposed change in the development would result in greater than a cumulative 50 percent increase in the area covered by buildings, asphalt, or concrete paving; or
2. The proposed change in development would result in development on a lot or lots which were not included in the development authorized by the issued permit.

(c) If a permittee with a waterfront development permit for development located landward of the mean high water line proposes a change in the development that would not require a new permit under (b) above, and if the change in the development would have any of the results listed at (c)1 through 3 below, the permittee shall submit a request for a major modification of the waterfront development permit.

1. A cumulative increase in area covered by buildings, asphalt, or concrete paving of greater than 0.25 acres;
2. A new or increased encroachment in any of the following Special Areas: N.J.A.C. 7:7E-3.2 through 3.42 and 3.44 through 3.47; or
3. New or relocated development within 200 feet of any property sharing a common property boundary with the property or properties on which the proposed development would occur.
  - i. For a linear development, this criterion applies only to new or relocated above ground structures.

(d) If a permittee with a waterfront development permit for development located landward of the mean high water line proposes a change in the development that would not require a new permit under (b) above, and if the change in the development does not meet the criteria at (c)1 through 3 above, the permittee shall submit a request for a minor modification of the waterfront development permit.

(e) If a permittee with a waterfront development permit for a development located below the mean high water line, proposes a change in the development that meets the criteria at (e)1 through 3 below, the permittee shall submit a request for a modification of the waterfront development permit. If the permittee proposes any other change in the development, the permittee shall apply for a new permit.

1. The proposed change in the development would not result in any additional filling or filling in areas not authorized for filling under the permit;



2. The proposed change in the development would modify only the structure authorized under the permit and the proposed change in development would not result in the development on a lot or lots which were not included in the development authorized by the permit. For example, a permittee proposing to change the configuration of a dock authorized under the permit may request a permit modification; however, a permittee proposing to construct additional docks or a bulkhead, or to undertake dredging is required to apply for a new permit; and

3. If the proposed change in development is a change in a dredging activity, and is:

- i. A change in the method of dredging;
- ii. A change in location for placement of dredged material; or
- iii. A change in the volume of material to be dredged without changing the specific area within which the permit authorized dredging.

(f) If a permittee with a coastal wetlands permit proposes a change in the development that would not result in either additional excavation or filling or in excavation or filling in areas not authorized under the issued permit, the permittee shall submit a request for a modification of the coastal wetlands permit. If the permittee proposes any other change in the development, the permittee shall apply for a new permit.

(g) If a permittee with a CAFRA permit proposes a change in the development that would not require a new permit under (b) above, and if the change in development would have any of the results listed at (c)1 through 3 above, the permittee shall submit a request for a major modification of the CAFRA permit.

(h) If a permittee with a CAFRA permit proposes a change in the development that would not require a new permit under (b) above, and if the change in the development does not meet the criteria at (c)1 through 3 above, the permittee shall submit a request for a minor modification of the CAFRA permit.

(i) A permittee requesting a modification to a coastal permit shall submit to the Department the following:

1. A completed LURP application form;
2. A copy of the permit to be modified, approved site plan(s), and summary report (if applicable);
3. A detailed explanation of the proposed change(s) in the previously authorized development and the reason for changing the previously authorized development;
4. An amended Environmental Impact Statement or Compliance Statement addressing all applicable Coastal Zone Management rules (N.J.A.C. 7:7E);
5. Five copies of an amended site plan(s), showing all proposed changes in the development;
6. The applicable fee under N.J.A.C. 7:7-10;
7. Verification (white mailing receipt or other written receipt is acceptable and a copy of the public notice) that public notice has been provided in accordance with (j) below. Verification shall also include a list, certified by the municipality, of all owners of real property, including easements as shown on the tax duplicate to which individual notice is required in accordance with N.J.A.C. 7:7-4.10(j) below. The list of property owners certified by the municipality shall be no more than one year old; and
8. Any additional information necessary to review the proposed modification.

(j) The permittee shall provide public notice as follows:

1. For a major modification of a CAFRA permit or a waterfront development permit for development located landward of the mean high water line:

i. Submission of three complete copies of the request for a modification required under (i) above to the clerk of the municipality in which the proposed development would occur, including a letter requesting that the clerk distribute one copy to the planning board and one copy to the environmental commission. The third copy shall be maintained in the clerk's office.

(1) Requests for a modification of a permit for development within the Pinelands Preservation Area or Protection Area must also contain verification that a complete copy of the request for a modification has been submitted to the Pinelands Commission.

(2) Requests for a modification of a permit for installing a submarine cable or sand mining in the ocean must also contain verification that a certified mail notice (white mailing receipt or other written receipt is acceptable) and a copy of the site plan and completed LURP application form have been forwarded to the organizations listed at (j)1i(2)(A) through (G) below. The site plan referred to in this subsection shall be a NOAA nautical chart depicting the proposed cable route or limits of the proposed sand mining area. The language of the public notice shall read as found at (j)1ii below and a copy shall be included in the application to the Department.

- (A) Garden State Seafood Association;
- (B) National Fisheries Institute;
- (C) North Atlantic Clam Association,
- (D) Rutgers Cooperative Extension;
- (E) New Jersey Shellfisheries Council;
- (F) New Jersey Marine Fisheries Council; and
- (G) Commercial Fishing Communications Association.

ii. Submission of a copy of the amended site plan and completed LURP application form to the construction official of the municipality in which the proposed development would occur, to the planning board and environmental commission of the county in which the proposed development would occur, and to all owners of real property, including easements, as shown on the tax duplicate, within 200 feet of the property or properties on which the proposed development would occur. Exceptions to required notice to all owners of real property within 200 feet of the property or properties on which the proposed development would occur are found at (j)1iii and (j)4 below. The amended site plan referred to in this paragraph need not include a full set of plans, but shall depict the proposed development in relationship to existing site conditions. This plan may be on an 8½ inch by 11 inch sheet of paper provided it generally depicts the proposed development and the general and site specific location. The public notice shall read as follows and a copy shall be included in the application to the Department:

"This letter is to provide you with legal notification that a request for modification of a coastal permit will be submitted to the New Jersey Department of Environmental Protection,

Land Use Regulation Program to modify an existing coastal permit in order to construct the development shown on the enclosed plan.

The complete request for modification of the coastal permit can be reviewed at either the municipal clerk's office or by appointment at the Department's Trenton office. The Department of Environmental Protection welcomes comments and any information that you may provide concerning the proposed development and site. Please submit your written comments within 15 days of receiving this letter to:

New Jersey Department of Environmental Protection  
Land Use Regulation Program  
PO Box 439  
501 East State Street  
Trenton, New Jersey 08625-0439  
attn: (Municipality in which property is located) Section Chief";

iii. For modified developments proposed on the site of an industrial, commercial or residential development of at least 100 acres or a park facility of at least 50 acres, provided there is no change in land use, the Department may, at its discretion, limit the requirement for public notice to property owners at (j)1ii above to only those property owners the Department has determined are likely to be affected by the modification(s) to the previously approved development. The determination will be based on the size of the proposed modification and its proximity to properties within 200 feet.

2. For a minor modification of a CAFRA permit or a waterfront development permit for a development located landward of the mean high water line, public notice in accordance with (j)1i above.

3. For a modification of a coastal wetlands permit or waterfront development permit for a development located below (outshore of) the mean high water line, public notice shall consist of the following:

i. Notice to the municipal clerk, planning board and environmental commission in accordance with (j)1i;

ii. Notice including a copy of the amended site plan and completed LURP application form, to all owners of real property including easements, sharing a common property boundary with the property on which the proposed development would occur. The amended site plan referred to in this paragraph need not include a full set of plans, but shall depict the proposed development in relationship to existing site conditions. This plan may be on an 8½ inch by 11 inch sheet of paper provided it generally depicts the proposed development and the general and site specific location. The public notice shall read as described at (j)1ii and a copy shall be included in the application to the Department;

4. Rather than public notice as required under (j)1 through 3 above, for a modification of any coastal permit, if the change is to a linear development of one-half mile or more in length, or a shore protection development including beach nourishment, beach and dune maintenance or dune creation of one half-mile or more in length, public notice shall consist of the following:

i. Notice in the official newspaper of the municipality or in a newspaper of general circulation in the municipality if there is no official newspaper. This newspaper notice shall be published as a display advertisement of at least four inches in width;

ii. Notice to the municipal clerk, planning board and environmental commission in accordance with (j)1i;

iii. Notice including a copy of the amended site plan and completed LURP application form to the construction official of the municipality in which the proposed development would occur, and to the planning board and environmental commission of the county in which the proposed development would occur. The amended site plan requirements and notice language are found at (j)3ii above.

iv. Notice including a copy of the amended site plan and completed LURP application form to all owners of real property, including easements as shown on the tax duplicate, within 200 feet of a proposed above ground structure related to the proposed linear development or shore protection structure, such as a treatment plant, groin, revetment, gabion or bulkhead rather than to all owners of real property, including easements as shown on the tax duplicate, within 200 feet

of the property or properties on which the proposed development would occur. The amended site plan requirements and notice language are found at (j)3ii above.

(k) The Department shall publish in the DEP Bulletin notice of the receipt of each request for modification of a coastal permit and notice of the approval or disapproval of each request.

#### **7:7-4.11 Suspension and revocation of permits**

(a) A permit is suspendable for good cause, such as, but not limited to, violations of permit condition, significant changes in the plan for the development which occur after a permit is issued which are not explicitly authorized in writing by the Department, the applicant's failure to correctly identify project impacts, or unanticipated adverse effects caused by the development.

1. Prior to the suspension, the Department shall furnish written notice to the permittee by certified mail, providing 10 days within which to either remedy the violations, provide an explanation of why such violations cannot be remedied, offer a plan to remedy these violations, or demonstrate to the Department that good cause for suspension does not exist. Any remedial plan shall indicate the time necessary to implement the remedy.

2. If the above requirements have not been met, the permit shall be suspended. Construction may not commence, or if underway, shall then cease until the Department has lifted the suspension.

3. A permittee may appeal suspension of a permit according to the provisions of N.J.A.C. 7:7-5 only if construction has ceased.

(b) A suspended permit is revocable for good cause.

1. Prior to revocation, the Department shall provide the permittee with written notice, by certified mail, of intent to revoke the permit and of the permittee's right to a hearing pursuant to the provisions of N.J.A.C. 7:7-5. A request for a hearing shall be addressed to the Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection, CN 402, Trenton, New Jersey 08625-0402.

2. If such a hearing is not requested within 10 days of receipt of said notice, the permit shall automatically be revoked.

3. Should a permit be revoked, the permittee shall make all reasonable efforts to restore the site to its pre-construction condition.

## **SUBCHAPTER 5. PROCEDURES TO REQUEST AN ADJUDICATORY HEARING TO CONTEST A PERMIT DECISION**

### **7:7-5.1 Hearing request**

(a) Subject to the limitation on third-party hearing rights specified in (d) below, any interested persons who consider themselves aggrieved by a permit decision of the Land Use Regulation Program may, within 30 days of publication of notice of the permit decision in the DEP Bulletin submit a written request for an adjudicatory hearing to the Office of Legal Affairs, Attention: Adjudicatory Hearing Requests, Department of Environmental Protection, 401 East State Street, P.O. Box 402, Trenton, New Jersey 08625-0402. The DEP Bulletin is available through the Department's website at [www.state.nj.us/dep](http://www.state.nj.us/dep). The written request shall include:

1. All information required by the "Adjudicatory Hearing Request Checklist and Tracking Form" available from the Department's Land Use Regulation Program, PO Box 439, Trenton, NJ 08625-0439 and on the Land Use Regulation Program's website at [www.state.nj.us/dep/landuse](http://www.state.nj.us/dep/landuse), including the following:

1. Information on the person requesting the hearing;
- ii. Information on the decision being appealed;
- iii. A copy of the decision document;
- iv. The legal and factual basis for the appeal;
- v. Information on the issues being appealed, whether they were discussed during the review process and suggestions to settle these issues; and
- vi. Any special hearing requirements.

2. If the hearing request is submitted by someone other than the applicant, in addition to submitting the information requested above, the person requesting the hearing shall submit additional information including the following:

- i. Evidence of notice to the permit applicant;

ii. Information regarding the participation of the person requesting the hearing in the application review process; and

iii. Information necessary for the Department to determine whether the appellant has a legal right to a hearing.

(b) A hearing request may include a request that the permit or any and all conditions of the permit be stayed.

(c) Nothing in this section shall be construed to provide a right to an adjudicatory hearing in contravention of N.J.S.A. 52:14B-3.1 through 3.3 (P.L.1993, c.359).

(d) If a permittee submits a hearing request contesting any condition of a permit, construction shall not commence until the adjudicatory hearing is resolved, unless the Commissioner issues a stay of the condition pursuant to N.J.A.C. 7:7-5.3(c).

#### **7:7-5.2 Response to a hearing request**

(a) Any interested person may, within 10 days of receiving notice of a hearing request or appeal statement, submit a written response.

(b) If the responding party contends that the hearing request should be denied, the answer should fully explain the basis for that contention.

(c) Any person or entity having a significant interest in the outcome of a hearing request, may, in addition to filing a response, request permission to participate in the appeal process. A request to participate must be postmarked within 10 days of publication of the notice of the hearing request in the DEP Bulletin, and must specify the requesting party's interest in the matter being appealed.

(d) Where the request to participate is filed by someone other than the applicant, evidence that a copy of the request has been mailed to the applicant shall be submitted.



### **7:7-5.3 Action on hearing request**

- (a) The Department shall publish notice of all hearing requests in the DEP Bulletin.
- (b) The Commissioner shall act on any hearing request which complies with the requirements of this subchapter within 21 days of its receipt.
- (c) The Commissioner may, upon request and for good cause shown, stay the effective date of the permit or any or all of the conditions of the permit pending resolution of the adjudicatory hearing.
- (d) Requests for which a hearing is granted shall be referred to the Office of Administrative Law which shall assign an administrative law judge to conduct a hearing on the matter in the form of a contested case hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.
- (e) Within 45 days of receipt of the administrative law judge's decision, the Commissioner shall accept, reject, or modify the decision.
- (f) The Commissioner's action shall be considered final agency action for the purposes of the Administrative Procedure Act, and shall be subject only to judicial review as provided in the Rules of Court.

### **7:7-5.4 Settlement in response to a hearing request**

- (a) Any applicant who has requested a hearing on a permit decision or has had a permit decision contested by a third party pursuant to this subchapter may, at any time prior to rendering of an initial decision by the Office of Administrative Law, submit a revised application for the purpose of negotiating a settlement.
- (b) Applicants will be required to submit information adequate to allow the Department to

fully assess any proposed revisions to the project.

(c) Notice of a proposed settlement which is arrived at pursuant to this section shall be published in the DEP Bulletin, and shall be provided to the clerk of the municipality in which the proposed development is located and to any interested third party who commented on the project in writing or at the public hearing (if one was held), and any interested person shall have 10 days from the date of publication in the DEP Bulletin to comment on a proposed settlement.

(d) The Department shall publish in the DEP Bulletin notice of any settlement, including a permit, which is arrived at pursuant to this section.

(e) Any permit which is issued as a result of a settlement may be appealed by an affected party not a party to the settlement, in the manner provided for in this subchapter.

## **SUBCHAPTER 6. INFORMATION REQUIREMENTS FOR ENVIRONMENTAL IMPACT STATEMENTS AND COMPLIANCE STATEMENTS**

### **7:7-6.1 When an EIS is required**

(a) An Environmental Impact Statement (EIS) or Compliance Statement, which shall provide the information needed to evaluate the effects of the proposed development on the environment of the coastal area, is required for all coastal permit applications. A request for modification of a coastal permit shall include an amended EIS or Compliance Statement pursuant to N.J.A.C. 7:7-4.10(i).

(b) The purpose of the EIS or Compliance Statement is to assist the applicant and the Department in assessing the probable effects of a proposal on the natural resources and human activities at the project site and surrounding region and in determining the proposed development's compliance with the Rules on Coastal Zone Management, N.J.A.C. 7:7E.

1. Both the Environmental Impact Statement and Compliance Statement are intended to provide a discussion of a proposed project in terms of the specific rules which apply to the proposed development. An EIS is required for major projects, including those projects which,

based on site conditions and/or the surrounding area, are anticipated to have greater environmental impacts. A Compliance Statement is required for minor projects.

2. A Compliance Statement is an abbreviated form of an EIS which may be submitted for minor projects. All applicable rules which apply to a proposed development or development site must be addressed in the Statement.

3. In cases where a proposed project appears to be neither major or minor scale, prospective applicants are encouraged to contact the Department's Land Use Regulation Program prior to submission of the permit application to determine what type of information is required. The goal of the Department is to have all applicable rules or policies addressed and all potential impacts clearly discussed in the permit application.

#### **7:7-6.2 Formats and contents**

(a) The applicant shall prepare and submit the EIS or Compliance Statement in the form and manner set forth in this subchapter. Failure to comply with these requirements may result in a determination that an application is not complete for public hearing or final review, depending on its status (see N.J.A.C. 7:7-4.1 and 4.4).

(b) The applicant shall include in the EIS or Compliance Statement the following:

1. Summary: A brief one or two page summary shall preface the EIS or Compliance Statement, and shall contain:
  - i. A description of site, including location, tax map designation, and existing conditions;
  - ii. A description of the size, nature and location of the proposed development;
  - iii. A description of the major environmental impacts associated with the proposed development, including possible areas of controversy or significant issues to be solved; and
  - iv. A list of any other municipal, state or federal approvals required or received, if any;
2. Project description: The project description consists of eight elements which, when taken together, describe what the applicant proposes to do, where it will be done, how it will be constructed, and how it will be operated.
  - i. The description shall consist of written and graphic material and development plans as specified in N.J.A.C. 7:7-4.2(a)7.

ii. The eight elements are: the development description, site plan, structure description, housing plan, transportation plan, utilities plan, public services plan, and outdoor recreation plan (as appropriate);

3. Environmental assessment and compliance with the Coastal Zone Management rules.

This section shall include an environmental inventory assessment which describes and documents, in narrative form, environmental conditions at the site and the surrounding region, and then assesses the probable impacts of the development on the built and natural environment. This section shall also include a detailed statement of compliance with the Coastal Zone Management rules, N.J.A.C. 7:7E and a listing of adverse impacts, mitigation and alternatives; and

4. Appendices as needed.

(c) For CAFRA permit applications the EIS or Compliance Statement shall demonstrate that the proposed development:

1. Conforms with all applicable air, water and radiation emission and effluent standards and all applicable water quality criteria and air quality standards;

2. Prevents air emissions and water effluents in excess of the existing dilution, assimilative, and recovery capacities of the air and water environments at the site and within the surrounding region;

3. Provides for the collection and disposal of litter, recyclable and solid waste in such a manner as to minimize adverse environmental effects and the threat to the public health, safety, and welfare;

4. Would result in minimal feasible impairment of the regenerative capacity of water aquifers or other ground or surface water supplies;

5. Would cause minimal feasible interference with the natural functioning of plant, animal, fish, and human life processes at the site and within the surrounding region;

6. Is located or constructed so as to neither endanger human life or property nor otherwise impair the public health, safety, and welfare; and

7. Would result in minimal practicable degradation of unique or irreplaceable land types, historical or archaeological areas, and existing public scenic attributes at the site and within the surrounding region.

(d) The inventory and assessment is to be made with reference to the most current Rules on Coastal Zone Management, N.J.A.C. 7:7E. It should contain sufficient detail to enable an evaluation of the development, to provide a basis for the applicant's assessment of environmental impacts, and to enable the Department to make the necessary findings for permit approval.

1. Specific requirements will vary depending on the magnitude and complexity of the project, and on the sensitivity of the land and water features of the site.

2. An EIS contains a more thorough review of a proposed development's impacts than a Compliance Statement, including such data as traffic analyses, stormwater management calculations, archaeological surveys, environmental resource inventories, habitat assessment, and detailed design specifications for the proposed construction. In most cases, an EIS will address a greater number of rules since the proposed development and associated impacts will be larger in scope. The EIS will also contain more information regarding project alternatives and mitigation measures designed to reduce the overall impact of the proposed development on the environment.

### **7:7-6.3 Preparation**

(a) The level of detail and areas of emphasis in an EIS will vary depending upon the nature and complexity of the facility and the nature of the site and its surrounding regions.

1. The EIS should be concise, and should contain the facts and analyses necessary to evaluate the application with reference to the Department's Rules on Coastal Resource and Development Policies, N.J.A.C. 7:7E.

2. The information should be presented in an analytic, rather than an encyclopedic format.

(b) If the applicant believes that specific elements of the EIS or Compliance Statement are not applicable to the proposed development, the applicant may indicate "not applicable" under the appropriate heading. The reason why the information is not required should be indicated.

(c) The EIS shall be bound or in loose-leaf form, on 8 1/2 by 11 inch paper. All maps, plans and aerial photographs shall specify a north point, graphic scale, name of preparer, date of preparation (including all revisions), and source of information. All appendices shall be labeled on the cover page so that they can be identified.

(d) The EIS or Compliance Statement should be prepared using an interdisciplinary approach, and the qualifications of the persons who prepared each element shall be identified in a separate section. References to information, reports or treatises not contained in the EIS shall be cited throughout the text as appropriate, and in a consistent manner.

(e) The Department recognizes that some or all of the EIS requirements set forth below in (f) may be addressed in an EIS prepared to meet requirements of another governmental agency or body. Such an EIS may be submitted under this subchapter, but must be supplemented in order to comply with (f) below.

(f) The EIS or Compliance Statement must discuss the applicability of the Department's Rules on Coastal Zone Management, N.J.A.C. 7:7E, to the proposal. This information is to be submitted in both map form and as part of the environmental inventory and assessment.

## **SUBCHAPTER 7. GENERAL PERMITS AND PERMITS-BY-RULE**

### **7:7-7.1 General standards for issuing coastal general permits and permits-by-rule**

(a) This section contains the procedures and substantive standards governing the issuance of new coastal general permits in accordance with CAFRA, N.J.S.A. 13:19-1, the Waterfront Development Law, N.J.S.A 12:5-1 et seq., and the Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq., and contains the procedures and substantive standards for the issuance of permits-by-rule. N.J.A.C. 7:7-7.2 and 7.3 contain the procedures and substantive standards for authorizing various developments under the issued coastal general permits. N.J.A.C. 7:7-7.4 describes the activities authorized by permit-by-rule.

(b) Before reissuing a coastal general permit or permit-by-rule, or adopting a new coastal general permit or permit-by-rule, the Department will propose a draft coastal general permit or permit-by-rule for public comment in the form of a rule proposal pursuant to the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

(c) The Department may issue a coastal general permit or permit-by-rule only if all of the following conditions are met:

1. The Department determines that the regulated development will cause only minimal adverse environmental impacts when performed separately, will have only minimal cumulative adverse impacts on the environment, and is in keeping with the legislative intent to protect and preserve the coastal area from inappropriate development;
2. The Department determines that the development will be in conformance with the purposes of applicable statutes; and
3. The Department has provided public notice and an opportunity for a public hearing with respect to the proposed coastal general permit or permit-by-rule. After a coastal general permit has been issued by the Department, the Department will not hold hearings on individual applications for a coastal general permit.

(d) Each coastal general permit or permit-by-rule shall contain a specific description of the type(s) of development which are authorized, including limitations for any single operation, to ensure that the requirements of (a), (b) and (c) above are satisfied. At a minimum, these limitations shall include:

1. The size and type of the development that may be undertaken; and
2. A precise description of the geographic area to which the coastal general permit or permit-by-rule applies.

(e) The Department will include in each coastal general permit or permit-by-rule issued pursuant to this subchapter appropriate conditions applicable to particular types of sites or development which must be met in order for a proposed development or activity to qualify for authorization under the coastal general permit or permit-by-rule.

1. The Department may add special conditions which must be met in order for a specific proposed development to qualify for a coastal general permit.

(f) The Department may, by proposing and adopting regulations, rescind a category of coastal general permit or permit-by-rule, and thereafter require individual permits for development previously covered by the coastal general permit or permit-by-rule, if it finds that the coastal general permit or permit-by-rule no longer meets the purposes of applicable statutes and of this chapter.

(g) The Department shall review each coastal general permit and permit-by-rule a minimum of once every five years in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. This review shall include public notice and an opportunity for public hearing. Upon completion of this review, the Department shall either modify, reissue or revoke each coastal general permit and permit-by-rule previously adopted.

(h) If a coastal general permit or permit-by-rule is not modified or reissued within five years of initial adoption by publication in the New Jersey Register, it shall automatically expire.

(i) N.J.A.C. 7:7-7.2 sets forth the procedure for obtaining an authorization under a permit-by-rule and the substantive standards for the various permits-by-rule. N.J.A.C. 7:7-7.3 sets forth the procedure for obtaining an authorization under a coastal general permit, and N.J.A.C. 7:7-7.5 through 7:7-7.26 set forth the substantive standards for the various coastal general permits.

### **7:7-7.2 Permits-By-Rule**

(a) This section details the activities authorized by a Permit-By-Rule.

1. Single family Home or Duplex Expansion: The expansion of a legally constructed, habitable single family home or duplex on the non-waterward sides of the single family home or duplex, provided that the expansion does not exceed a cumulative surface area of 400 square feet on the property constructed after July 19, 1994, and provided that such expansion is not proposed on a beach, dune, or wetland. For example, a 200 square foot expansion of a single family home



or duplex could be authorized under this permit-by-rule and an additional 200 square foot expansion could later be authorized under this permit-by-rule, since the cumulative footprint of the development for both expansions would not exceed 400 square feet on the property. However, a property on which a 300 square foot expansion was already constructed pursuant to a permit-by-rule would not be eligible for another permit-by-rule subsequently for an additional 200 square foot expansion since the cumulative total footprint of development for both expansions would exceed 400 square feet.

2. Reserved.

3. The development (including expansion or reconstruction and expansion) of a single family home or duplex and/or accessory development (such as garages, sheds, pools driveways, grading, excavation and clearing excluding shore protection structures) provided the single family home or duplex and accessory development are located on a bulkheaded lagoon lot and, provided that the proposed single family home or duplex and/or accessory structures comply with all of the following:

- i. Development under this permit-by-rule shall not result in development of more than one single family home or duplex either solely or in conjunction with a previous development as defined at N.J.A.C. 7:7-2.1(b)8;
- ii. The site is located on a man-made lagoon lot, with an existing bulkhead along the entire waterfront portion of the site;
- iii. All waterfront portions of the site are protected by a currently serviceable bulkhead;
- iv. There are no wetlands on the site landward of the bulkhead;
- v. The proposed single family home or duplex and accessory structures, excluding decks, are set back a minimum of 15 feet from the waterward face of the bulkhead. If there is no alternative to locating the proposed single family home or duplex and accessory structures at least 15 feet landward of the bulkhead, the set back shall be reduced if an engineering certification is provided demonstrating that, after the proposed development has been constructed, the shore protection structure can be replaced within 18 inches of the existing bulkhead and a conservation restriction is recorded for the property which states that any reconstruction of a bulkhead shall be within 18 inches of the existing bulkhead;

vi. A silt fence is erected landward of the bulkhead with a 10-foot landward return on each end prior to construction. This fence shall be maintained and remain in place until all construction and landscaping activities are completed;

vii. If the development includes the construction of a driveway, any newly constructed portion of the driveway shall be covered with a permeable material or else be pitched to drain all runoff onto permeable areas of the site;

viii. The development shall comply with the elevation and flood proofing requirements of the National Flood Insurance Program regulations at 44 CFR Chapter 1;

ix. The single family home or duplex shall be serviced by an existing municipal sewer system; and

x. All sub-gravel liners must be made of filter cloth or other permeable material.

4. Placement of public safety or beach/dune ordinance signs on beaches and dunes provided no footings are required, and placement of signs at public parks.

5. The construction of non-residential docks, piers and boat ramps located landward of the mean high water line, provided that the construction waterward of the mean high water line has received a Waterfront Development permit. The width of the structure landward of the mean high water line shall not exceed the width of the structure waterward of the mean high water line. The width of the structure over wetlands shall not exceed six feet and the height shall be a minimum of four feet over the wetlands. This permit-by-rule also includes the construction of non-residential decks provided they are not located on a beach, dune or wetland, provided the construction does not require clearing of forest vegetation and provided the size does not exceed a footprint area of 400 square feet. The Waterfront Development permit may include additional conditions (including but not limited to public access to the waterfront) on the upland construction to insure compliance with the Coastal Zone Management rules, N.J.A.C. 7:7E.

6. The construction of the portion of a recreational dock or pier landward of the mean high water line at a residential development, provided that construction waterward of the mean high water line is authorized through the issuance of a Waterfront Development permit. The width of the structure landward of the mean high water line shall not exceed the width of the structure waterward of the mean high water line. The width of the structure over wetlands shall not exceed six feet and the height shall be a minimum of four feet over the wetlands. The

Waterfront Development permit may include additional conditions on the upland construction to insure compliance with the Coastal Zone Management rules (N.J.A.C. 7:7E). For example, the Waterfront Development permit may be conditioned to require the dock to cross the wetlands at the narrowest point on the property or to allow continued access along the shoreline.

7. Voluntary Reconstruction: The voluntary reconstruction of a non-damaged legally constructed, currently habitable residential or commercial development within the same footprint, provided that such reconstruction is in compliance with existing requirements or codes of municipal, State and Federal law and provided:

- i. The reconstruction does not result in the enlargement or relocation of the footprint of the development;
- ii. In the case of a residential development, the reconstruction does not result in an increase in the number of dwelling units;
- iii. In the case of a commercial development, the reconstruction does not result in an increase in the number of parking spaces or equivalent paved area associated with the development; and
- iv. The reconstruction does not increase the area covered by buildings and/or asphalt or concrete pavement.
- v. This permit-by-rule does not apply to repairs or maintenance of the residential or commercial development, such as replacing siding, windows or roofs.

8. The construction of a utility line, including cable (that is, electric, television, or fiber optic), telecommunication, wastewater, petroleum, natural gas, or water, attached to a bridge or culvert. This permit-by-rule applies only to that portion of the utility line that will be constructed across the tidal waterway up to the mean high water line, provided a tidelands instrument has been obtained for the utility line. The construction of the utility line shall comply with the following:

- i. No excavation, dredging or filling shall be undertaken within the water body over which the utility line crosses;
- ii. The utility line shall be firmly attached to the existing bridge or culvert structure so that no part of the utility line, its encasement, or any attachment device extends above or below the existing bridge or culvert structure;

(1) If the crossing is a bridge, the utility line, its encasement, and all attachment devices shall be located entirely above the elevation of the low chord of the superstructure and entirely below the elevation of the bridge surface;

(2) If the crossing is a culvert, the utility line, its encasement, and all attachment devices shall be located entirely above the overt elevation of the culvert and entirely below the elevation of the top of the culvert;

(3) If the utility line is a pipeline that conveys any substance other than potable water, the utility line shall be sufficiently encased within ductile iron or concrete to protect the utility line from damage from impact with floating debris during floods; and

(4) If there is a predominant direction of flow within the water body, the utility line shall be attached to the downstream face of the bridge or culvert;

iii. The installation of the utility line shall have no adverse impacts to special areas as defined in the Coastal Zone Management rules, N.J.A.C. 7:7E-3;

iv. Construction equipment shall be operated from land, the top of the bridge or culvert, or from barges, and shall under no circumstances be allowed to enter the water body; and

v. This permit-by-rule does not relieve the permittee from the obligation of obtaining all necessary approvals from the U.S. Army Corps of Engineers.

9. Where a single family home or duplex is proposed or exists on a lot which was previously filled and is not part of a larger development, the prior filling of any lands on the lot formerly flowed by the tide shall be considered by the Department to be authorized provided the filling appears on the applicable Tidelands Map adopted by the Tidelands Resource Council (base map photography dated 1977/78). The permit-by-rule is only effective if a tidelands instrument has been obtained for all filled tidelands areas.

10. The construction of the portion of a boat ramp landward of the mean high water line at a residential development, provided that construction waterward of the mean high water line is authorized through the issuance of a Waterfront Development permit. A boat ramp located within wetlands is not authorized by this permit-by-rule. The width of the boat ramp landward of the mean high water line shall not exceed the width of the boat ramp waterward of the mean high water line. The Waterfront Development permit may include additional conditions on the

upland construction to insure compliance with the Coastal Zone Management rules (N.J.A.C. 7:7E).

(b) For activities subject to (a) 5, 6 and 10 above, the Department shall review the activities subject to the permit-by-rule in conjunction with the Waterfront Development permit application.

(c) Notification to the Department prior to commencement of a development which meets the conditions of (a)1, 3, 4, 7, 8 and 9 above is not required.

### **7:7-7.3 Application procedure for a coastal general permit authorization**

(a) A person proposing to engage in an activity covered by a coastal general permit shall submit the following to the Department:

1. A completed LURP application form;
2. Photographs showing the specific location of the proposed development taken from a minimum of four different locations and labeled as to orientation;
3. The general site location of the development, which may be identified on a county or local road map or an insert from a U.S. Geological Survey topographic quadrangle map;
4. Verification (white certified mailing receipt or other written receipt is required) that three complete copies of the application package have been submitted to the clerk of the municipality in which the proposed development would occur, including a letter requesting that the clerk distribute one copy to the planning board and one copy to the environmental commission, or any public body with similar responsibilities. The third copy shall be maintained in the clerk's office. Applications for coastal general permits within the Pinelands Preservation Area or Protection Area must also contain verification that a complete copy of the application package has been submitted to the Pinelands Commission;
5. Verification that a certified mail notice (white receipts or green cards are acceptable) and a copy of the site plan and completed LURP application form have been forwarded to the construction code official of the municipality in which the proposed development would occur, and to the planning board and environmental commission of the county in which the proposed development would occur. Verification that notice has also been provided to all owners of real

property, including easements, as shown on the tax duplicate, surrounding and sharing a property boundary at any point on the perimeter of the proposed development. Verification in the form of a list certified by the municipality of all owners of real property, including easements as shown on the tax duplicate, surrounding and sharing a property boundary at any point, except as provided at (a)5i and ii below shall also be provided. The site plan referred to in this subsection need not include a full set of plans, but must depict the proposed development in relationship to existing site conditions. This plan may be on an 8 1/2 inch by 11 inch sheet of paper provided it generally depicts the proposed development and the general and site specific location. The public notice shall read as follows:

"This letter is to provide you with legal notification that an application will be submitted to the New Jersey Department of Environmental Protection, Land Use Regulation Program for authorization under a coastal general permit for (describe the proposed development).

The complete permit application package can be reviewed at either the municipal clerk's office or by appointment at the Department's Trenton office. The Department of Environmental Protection welcomes comments and any information that you may provide concerning the proposed development and site. Please submit your written comments within 15 days of receiving this letter. Your comments should be sent along with a copy of this letter to:

New Jersey Department of Environmental Protection

Land Use Regulation Program

P.O. Box 439

Trenton, New Jersey 08625-0439

attn: (Municipality in which property is located) Section Chief;"

i. For beach and dune maintenance permit applications which involve more than one single family lot, the applicant shall provide public notice in the official newspaper of the municipality or in a newspaper of general circulation in the municipality if there is no official newspaper. This newspaper notice shall be published as a display advertisement of at least four inches in width.

Such an application shall also include verification that a certified mail notice (white mailing receipt or other written receipt is acceptable) and a copy of the site plan and completed LURP application form have been forwarded to all owners of real property, including easements, as shown on the tax duplicate within 200 feet of a proposed dune walkover structure, rather than to all owners of real property, including easements within 200 feet of the beach and dune maintenance activities. The site plan referred to in this subsection need not include a full set of plans, but must depict the proposed development in relationship to existing site conditions. This plan may be on an 8 1/2 inch by 11 inch sheet of paper provided it generally depicts the proposed development and the general and site specific location;

ii. For additional development proposed on the site of an existing park facility of at least 50 acres in size, the Department may at its discretion eliminate, modify or reduce the requirement for individual notice to owners of real property, including easements, depending on the scope, location and anticipated impacts of the proposed development. For example, an applicant proposing to construct tennis courts located on one side of a 200 acre park facility might be required to notice only those property owners within the vicinity of the proposed tennis court.

6. All coastal permit applications shall include the state plane coordinates for a point at the approximate center of the site, except as provided at (a)6i and ii below. The accuracy of the State plane coordinates shall be within 50 feet of the actual center point of the site. For assistance in determining the State plane coordinates for a site contact the Department's Geographic Information (GIS) Office at (609) 777-0672;

i. State plane coordinates are not required for applications for the following coastal general permits: N.J.A.C. 7:7-7.7 (for single family homes or duplexes that are not part of a larger development only), 7.8, 7.9, 7.10, 7.11, 7.12, 7.14, 7.18, 7.19, and 7.20;

ii. For shore protection development including beach nourishment, beach and dune maintenance or dune creation, the State plane coordinates shall be provided in accordance with (a)6ii(1) or (2) below;

(1) For a shore protection development including beach nourishment, beach and dune maintenance or dune creation of one-half mile or more in length, the state plane coordinates shall include the coordinates for the end points of the development and the coordinates for points located at 1,000 foot intervals along the entire length of the development; or

(2) For a shore protection development including beach nourishment, beach and dune maintenance or dune creation of one-half mile or less, the state plane coordinates shall include the coordinates for the end points of the development;

7. A fee pursuant to N.J.A.C. 7:7-10; and

8. The additional information for the specific coastal general permit for which the authorization is sought, as required under N.J.A.C. 7:7-7.5 through 7.26.

(b) Within 20 working days of receipt of the application, the Department shall take one of the following actions:

1. Declare the application complete for final review effective the date of receipt by the Department;

2. Assign an agency project number and accept the application, but request in writing that the applicant submit additional information within a specific period of time to assist in the Department's review.

i. Notwithstanding any other provision of these rules, no application shall be declared complete for final review unless and until the applicant has possession of tidelands instruments required for the riparian land. The Department may in its discretion issue a permit decision prior to receipt of the tidelands instrument provided that a complete application tidelands instrument has been received by the Department's Bureau of Tidelands Management; or

3. Return the application, explaining why it is unacceptable for filing, and return the filing fee upon notification that the applicant does not intend to reapply.

(c) Within 15 days of the receipt of any additional information submitted pursuant to (b)2 above, the Department shall issue notification to the applicant regarding whether the amended application is considered complete.

1. Such notification shall either:

i. Specify which deficiencies still remain; or  
ii. Declare the application complete for final review effective the date of receipt of the additional information.

2. Copies of information submitted in response to deficiency letters shall be submitted to the



municipal clerk and at the discretion of the Department, be distributed by the applicant to the same persons to whom copies of the initial application were distributed.

(d) The Department shall make a decision within 90 days of the application being declared complete for review.

(e) If an application is not complete for final review within 90 days of a request for additional information, the Department may, 30 days after providing written notice by certified mail to the applicant, cancel and return the application, unless the applicant can demonstrate good cause for the delay in completing the application. In such cases, a 90 day extension in which to submit the information will be granted.

1. All fees submitted with an application that is cancelled shall be non-refundable but will be applied toward re-submission of the application provided that such re-submission is within one year of the date of cancellation.

2. A re-submission of a previously cancelled application more than one year after the date of cancellation shall be accompanied by the appropriate fee pursuant to N.J.A.C. 7:7-10.

3. A re-submission of an application shall be required to meet the application requirements specified at N.J.A.C. 7:7-7.3.

(f) If the Department fails to render a decision on the coastal general permit within 90 days of the date it was declared complete for review, the application shall be deemed to have been approved, subject to the standard conditions set forth in N.J.A.C. 7:7-1.5, with the exception of any application for a coastal general permit authorization where the applicant has not received all required tidelands instruments setting forth the person's right to use or occupy the riparian land.

(g) An application for authorization under a coastal general permit will also be reviewed following the procedures set forth at N.J.A.C. 7:7-4.8 through 4.11.

(h) The Department shall require an application for an individual coastal permit instead of a coastal general permit if the Department finds that additional permit conditions would not be

sufficient, or that special circumstances make this action necessary to ensure compliance with statutory requirements.

(i) When all aspects of a project do not qualify for a coastal general permit, then the entire project shall require an individual coastal permit application, with the exception of authorization issued under the following coastal general permits:

- i. Coastal general permit for the development of a single family home or duplex (N.J.A.C. 7:7-7.8);
- ii. Coastal general permit for the expansion or reconstruction (with or without expansion) of a single family home or duplex (N.J.A.C. 7:7-7.9); and
- iii. Coastal general permit for the landfall of utilities (N.J.A.C. 7:7-7.16).

(j) When an authorized activity requires a tidelands instrument, the coastal general permit authorization shall not be a valid authorization to begin construction until the permittee has received a tidelands instrument.

(k) All coastal general permit authorizations shall be valid for a term not to exceed five years from the date of authorization by the Department. If the term of a coastal general permit authorization exceeds the expiration of the coastal general permit promulgated as a rule under this chapter, and the coastal general permit upon which the authorization was based is modified by rule to include more stringent standards or conditions, the permittee must comply with the requirements of the new regulations by applying for a new coastal general permit authorization unless construction is under way. If the coastal general permit is not repromulgated as a rule, the applicant must apply for an individual coastal permit unless construction pursuant to the prior coastal general permit authorization is already under way. In either of these cases where construction has begun, construction can continue to completion provided there are no cumulative lapses in construction activity of greater than one year.

1. For the purposes of this subsection, “construction” means having completed the foundations for buildings or structures, the subsurface improvements for roadways, or the necessary excavation and installation of bedding materials for utility lines. To determine if

construction of a development or part of a development has begun by the date of expiration of the coastal general permit, the Department shall evaluate such proofs as may be provided by the applicant including, but not limited to, the following: documentation that the local construction official has completed the inspection at N.J.A.C. 5:23-2.18(b)1I(2) or 2.18(b)1I(3) for foundations of structures; reports from the municipal engineer documenting inspections of road bed construction; or billing receipts documenting the completion of the above construction activities. "Construction" does not include clearing vegetation, bringing construction materials to the site, site grading or other earth work associated with preparing a site for construction.

#### **7:7-7.3A Requests for modifications of coastal general permit authorizations**

(a) If a permittee proposes a change in the development authorized under a coastal general permit during the term of validity of the permit authorization pursuant to N.J.A.C. 7:7-7.3(k), the permittee shall submit a request for a modification of the coastal general permit authorization in accordance with this section.

(b) A permittee may request a modification to a coastal general permit authorization provided:

1. The changed project would continue to be authorized under the same coastal general permit; and
2. The proposed change does not result in a significant change in the scale, use or impact to special areas as defined at N.J.A.C. 7:7E-3. The determination as to what constitutes a significant change will be based on a review of the original application file and new information submitted by the permittee which describes all proposed changes. A change that will result in less impact to special areas than the original approved development will not constitute a significant change. Significant changes generally include, but are not limited to, increased clearing, grading, filling or impervious cover, and reduction in buffers.

(c) For changes to coastal general permit authorizations that do not meet the standards of (b) above, a new coastal general permit authorization or individual coastal permit will be required.

(d) A permittee requesting a modification to a coastal general permit authorization shall submit to the Department the following:

1. A completed LURP application form;
2. Three copies of an amended site plan(s), showing:
  - i. All site plan information required under the specific coastal general permit;
  - ii. The originally approved development; and
  - iii. All proposed changes to the existing development.
3. A copy of the permit authorization to be modified and site plan(s) approved by that authorization;
4. The applicable fee under N.J.A.C. 7:7-10;
5. Verification (white certified mailing receipt or other written receipt is acceptable) that public notice has been provided in accordance with (e) below. Verification shall also include a list certified by the municipality of all owners of real property, including easements as shown on the tax duplicate to which individual notice is required in accordance with N.J.A.C. 7:7-7.3A(e) below; and
6. Any additional information the applicant believes will assist the Department in reviewing the proposed modification.

(e) The permittee shall provide public notice as follows:

1. For requests for a modification of a coastal general permit authorization other than those listed at (e)2 below:
  - i. Submission of three complete copies of the request for a modification under (d) above to the clerk of the municipality in which the proposed development would occur, including a letter requesting that the clerk distribute one copy to the planning board and one copy to the environmental commission, or any public agency with similar responsibilities. The third copy shall be maintained in the clerk's office. Requests for modification of a coastal general permit within the Pinelands Preservation Area or Protection Area must also contain verification that a complete copy of the request for a modification has been submitted to the Pinelands Commission.

ii. Submission of a copy of the amended site plan and completed LURP application form to the construction official of the municipality in which the proposed development would occur, and to the planning board and environmental commission of the county in which the proposed development would occur. Notice shall also be provided to all owners or real property including easements, as shown on the tax duplicate, surrounding and sharing a common property boundary at any point on the perimeter of the development to be modified. Such an application shall also contain a list, certified by the municipality, of owners or real property including easements, as shown on the tax duplicate, surrounding and sharing a common property boundary at any point, except as provided at (e)2 below. The amended site plan referred to in this paragraph need not include a full set of plans, but shall depict the proposed development in relationship to existing site conditions. This plan may be on an 8 1/2 inch by 11 inch sheet of paper provided it generally depicts the proposed development and the general and site specific location. The public notice shall read as follows and a copy shall be included in the submission to the Department:

"This letter is to provide you with legal notification that a request for modification of a coastal general permit authorization will be submitted to the New Jersey Department of Environmental Protection, Land Use Regulation Program to modify an existing coastal general permit authorization in order to construct the development shown on the enclosed plan.

The complete request for modification of the coastal general permit authorization can be reviewed at either the municipal clerk's office or by appointment at the Department's Trenton office. The Department of Environmental Protection welcomes comments and any information that you may provide concerning the proposed development and site. Please submit your written comments within 15 days of receiving this letter to:

New Jersey Department of Environmental Protection  
Land Use Regulation Program  
PO Box 439  
501 East State Street

Trenton, New Jersey 08625-0439

attn: (Municipality in which property is located) Section Chief";

iii. For modified developments proposed on the site of an existing park facility of at least 50 acres in size, the Department may, at its discretion, limit the requirement for public notice to property owners at (e)1ii above to only those property owners the Department has determined are likely to be affected by the modifications to the previously approved development. The determination shall be based on the size of the proposed modification and its proximity to properties sharing a common boundary.

2. Rather than public notice as required under (e)1 above, for a modification of a coastal general permit authorization for beach and dune maintenance activities which involve more than one single family lot, public notice shall consist of the following:

i. Notice in the official newspaper of the municipality or in a newspaper of general circulation in the municipality if there is no official newspaper. This newspaper notice shall be published as a display advertisement of at least four inches in width;

ii. Notice to the municipal clerk, planning board and environmental commission in accordance with (e)1i;

iii. Notice including a copy of the amended site plan and completed LURP application form to the construction official of the municipality in which the proposed development would occur, and to the planning board and environmental commission of the county in which the proposed development would occur. The amended site plan requirements and notice language are found at (e)1ii above.

iv. Notice including a copy of the amended site plan and completed LURP application form to all owners of real property, including easements as shown on the tax duplicate, within 200 feet of a proposed dune walkover structure. The amended site plan requirements and notice language are found at (e)1ii above.

(f) The Department shall publish in the DEP Bulletin notice of receipt of each request for modification of a coastal general permit authorization and notice of the approval or disapproval of each request.

#### **7:7-7.4 Long Branch Redevelopment Zone Permit**

(a) The construction of any development regulated under N.J.A.C. 7:7-2.1 within the Redevelopment Zone of the City of Long Branch, as defined in the Redevelopment Plan Ordinance of the City of Long Branch and as described at (a)1 below, is authorized, provided the conditions at (b) through (i) below are met:

1. The Redevelopment Zone of the City of Long Branch comprises that area circumscribed by a line starting at the point of intersection of North Bath Avenue and Ocean Boulevard, then moving northward along Ocean Boulevard to the intersection of Ocean Boulevard and Chelsea Avenue. Then move westward along Chelsea Avenue to the intersection of Chelsea Avenue and Second Avenue. Then move northward along Second Avenue to the intersection of Second Avenue and Broadway. Continue across Broadway in a northerly direction along Union Avenue until Union Avenue makes a 90 degree turn westward. At this point, continue in a northerly direction until meeting the southerly property line of the abandoned Conrail Railroad right-of-way. At this point, follow the southerly side of the right-of-way eastward to Long Branch Avenue. Continue in a northerly direction along Long Branch Avenue until the northerly side of the Conrail right-of-way is reached. From this point, follow the northerly side of the Conrail right-of-way westward to a point which intersects the westerly fence line of the New Jersey Natural Gas facility. Continue in a northerly direction along the fence line past the foot of Brook Street (C.P. Williams Way). Continue to follow fence in northern and eastern directions along the property line, which divides New Jersey Natural Gas/Jersey Central Power & Light property from City of Long Branch Housing Authority property, to Central Avenue. Continue in an easterly direction to the Open Brook. Follow the Open Brook in a northerly direction to the point of intersection with the property line of the former Jerry Morgan Park, known as Block 309, Lot 6.02. Follow this property line in an easterly and southerly direction until Long Branch Avenue is met. Continue in a southerly direction along Long Branch Avenue to the intersection of Long Branch Avenue and Cooper Avenue. Continue in an easterly direction along Cooper Avenue until the intersection of Cooper Avenue and Witmer Place. Continue northward along Witmer Place until the intersection of Witmer Place and Sea View Avenue. Follow Sea View Avenue eastward until meeting the high water mark of the Atlantic Ocean. Follow the mean

high water line inclusive of existing Pier riparian lands, known as Block 298, Lots 1.01 and 1.02, southward until reaching a point created by the intersection of the mean high water line and a line projected from the right-of-way for North Bath Avenue. Then turn westward along this line to North Bath Avenue to the point of origin, which is the intersection of Ocean Boulevard and North Bath Avenue.

(b) The development shall be in compliance with the Redevelopment Plan Ordinance and the Design Guidelines Ordinance of the City of Long Branch.

(c) The development must be approved by the Planning Board of the City of Long Branch, or, if it is a public development, by the City Council or the Redevelopment Agency of the City of Long Branch.

(d) The Long Branch Redevelopment Zone Permit established under this section does not apply to applications for development before the Board of Adjustment of the City of Long Branch or any other agency not specified in (c) above.

(e) If the Planning Board, the City Council, or the Redevelopment Agency of the City of Long Branch approves a development with a variance or waiver from a provision(s) of the Redevelopment Plan Ordinance or the Design Guidelines Ordinance of the City of Long Branch, and if the Department concurs in writing with such variance or waiver, the development is authorized under this section. The Department shall concur if the waiver or variance complies with the Coastal Zone Management rules, N.J.A.C. 7:7E, and if, notwithstanding the waiver or variance, the developments within the Redevelopment Zone continue to comply individually and collectively with the Coastal Zone Management rules.

(f) Construction, including site preparation, of a development proposed under this section shall not be started until either 45 days after receipt by the Department of the final Planning Board approval under (h) below or 90 days after receipt by the Department of notice under (i)1 below, whichever is applicable.



(g) For any development within the Redevelopment Zone of the City of Long Branch that does not meet the conditions for approval under this section, the applicant shall, pursuant to the applicable requirements of this chapter, either obtain from the Department a CAFRA individual permit or meet the requirements for authorization under a CAFRA general permit or permit-by-rule.

(h) The notification requirements for developments within the Redevelopment Zone of the City of Long Branch requiring Planning Board approval are as follows:

1. The Planning Board of the City of Long Branch shall provide notice to the Land Use Regulation Program, Supervisor of the Monmouth County Region, NJ Department of Environmental Protection, PO Box 439, Trenton, New Jersey 08625-0439, that an application for a development within the Redevelopment Zone has been filed with the Planning Board as soon as the Planning Board determines under the Municipal Land Use Law, N.J.S.A. 40:55D-10.3, that the application is complete for review. This notice shall include a copy of the application and of the development plan(s).

2. If the Department intends to comment on the development application prior to the Planning Board's taking action on the application, it shall provide the Planning Board with written comments within 30 days after receipt by the Department of notice under (h)1 above. The Department's comments may include suggestions regarding how the development should be modified in order to meet the requirements of the Long Branch Redevelopment Zone Permit.

3. The applicant shall provide notice, via certified mail, to the Land Use Regulation Program, Supervisor of the Monmouth County Region, NJ Department of Environmental Protection, PO Box 439, Trenton, New Jersey 08625-0439, of the date of the Planning Board hearing on the development application at least 10 days prior to the hearing.

4. The applicant shall provide notice of the preliminary and final Planning Board approvals to the Land Use Regulation Program, Supervisor of the Monmouth County Region, NJ Department of Environmental Protection, PO Box 439, Trenton, New Jersey 08625-0439, within seven days of the Planning Board's adoption of each memorializing resolution. This notice shall include a copy of the approved development plan(s) and of the resolution.

(i) The notification requirements for developments within the Redevelopment Zone of the City of Long Branch not requiring Planning Board approval are as follows:

1. The City Council or the Redevelopment Agency of the City of Long Branch shall provide notice to the Land Use Regulation Program, Supervisor of the Monmouth County Region, NJ Department of Environmental Protection, PO Box 439, Trenton, New Jersey 08625, that a development within the Redevelopment Zone is under consideration by the City Council or Redevelopment Agency 90 days prior to the solicitation of bids for construction of the development. This notice shall include a copy of the development plan(s).

2. If the Department intends to comment for the purpose of suggesting modifications to the development plan(s), it shall provide the City Council or the Redevelopment Agency with written comments within 30 days after receipt by the Department of notice under (i)1 above.

3. If the Department determines that the Long Branch Redevelopment Zone Permit under this section is not applicable and that a CAFRA individual permit, general permit or permit-by-rule is instead required, the Department shall, within 90 days of its receipt under (i)1 above of notice that a development is under consideration by the City Council or the Redevelopment Agency, so notify the City Council or the Redevelopment Agency.

(j) The Department shall publish notice in the DEP Bulletin of its decision under (h)5 or (i)3 above that the Long Branch Redevelopment Zone Permit is applicable or inapplicable.

(k) Subject to the limitation on third-party hearing rights specified in (k)5 below, any interested person who considers himself or herself aggrieved by a decision of the Land Use Regulation Program under (h)5 or (i)3 above may, within 10 days of publication of such decision in the DEP Bulletin, appeal to the DEP Commissioner by submitting a written request for a hearing addressed to the Office of Legal Affairs, Attention: Adjudicatory Hearing Requests, Department of Environmental Protection, 401 East State Street, PO Box 402, Trenton, New Jersey 08625-0402 and including a completed "Administrative Hearing Request Checklist and Tracking Form for Permits" incorporated herein by reference as chapter Appendix A.

1. The request for a hearing shall include the appropriate Department file number and, where

the request is submitted by someone other than the applicant, evidence that a copy of the hearing request has been mailed to the applicant.

2. The request for a hearing shall include a statement describing, in detail, how the person submitting the request is aggrieved by the decision, and which findings of fact and conclusions of law are being challenged.

3. The person submitting the request for a hearing shall mail a copy of the request to the Monmouth County Clerk and the City of Long Branch Clerk, and shall include proof of such mailing with the hearing request submitted to the Department.

4. A hearing request may include a request that the permit be stayed.

5. Nothing in this subsection shall be construed to provide a right to an adjudicatory hearing in contravention of N.J.S.A. 52:14-3.1 through 3.3 (P.L. 1993, c.359).

6. The procedures set forth at N.J.A.C. 7:7-5.2 through 5.4 shall govern the response to the appeal request, action on appeal request, and review of the revised application to settle appeal.

#### **7:7-7.5 Coastal general permit for amusement pier expansion**

(a) This coastal general permit authorizes the expansion of an existing, functional amusement pier as defined at N.J.A.C. 7:7-1.3 provided that the expansion complies with the following:

1. The amusement pier was existing and functional as of July 19, 1993;
2. The expansion does not exceed by more than 25 percent the footprint of the amusement pier as it existed on July 19, 1993;
3. The expansion is located more than 150 feet landward of the mean high water line;
4. The expansion will not eliminate or affect existing, direct public access from the boardwalk to the beach, unless for each access point eliminated another access point is provided immediately adjacent to the expanded amusement pier;
5. The expansion includes a provision for public seating and viewing at the terminal end of the expansion;
6. The expansion may consist of either structures or beach grading which does not result in change in existing beach elevations of more than one foot;
7. The expansion shall not result in excavation or grading of a dune;
8. The expanded amusement pier shall continue to be used only for amusements; and

9. The expansion is consistent with the Water Quality Management Plan adopted pursuant to N.J.A.C. 7:15.

(b) In addition to the application and information required under N.J.A.C. 7:7-7.3, the following information shall be submitted:

1. Three copies of a site plan(s) showing the following:

- i. The amusement pier as it existed on July 19, 1993, as it exists at the time of the application, and as it will appear with the proposed expansion;
- ii. Existing and proposed direct public access points from the boardwalk to the beach;
- iii. The proposed public seating and viewing area at the terminal end of the expansion; and
- iv. Location of the mean high water line of the Atlantic Ocean at or in proximity to the site;

and

2. A Compliance Statement prepared in accordance with N.J.A.C. 7:7-6, demonstrating how the proposed expansion complies with (a) above, including supplemental documents as appropriate, such as maps or surveys.

#### **7:7-7.6 Coastal general permit for beach and dune maintenance activities**

(a) This coastal general permit authorizes beach and dune maintenance activities provided:

1. The beach and dune maintenance activities are conducted in accordance with Best Management Practices as defined by the Department in the Coastal Zone Management rules at N.J.A.C. 7:7E-3A.2, 3A.3 and 3A.4 (routine beach maintenance, emergency post-storm beach restoration, and dune creation and maintenance, respectively); and
2. The beach and dune maintenance activities shall not be conducted in any wetlands.

(b) In addition to the application and information required under N.J.A.C. 7:7-7.3, the following information shall be submitted:

1. Three copies of a site plan(s) showing the specific location of all proposed beach and dune maintenance activities;

2. The name, title, address and telephone number of the person(s) responsible for supervising the proposed activities to ensure compliance with N.J.A.C. 7:7E- 3A.2, 3A.3 and 3A.4; and

3. The schedule for conducting the specific beach and dune maintenance activities.

#### **7:7-7.7 Coastal general permit for voluntary reconstruction of certain residential or commercial development**

(a) This coastal general permit authorizes the voluntary reconstruction of a non-damaged legally constructed, currently habitable residential or commercial development landward of the existing footprint of development provided:

1. Such reconstruction is in compliance with existing requirements or codes of municipal, State and Federal law, and:

2. The reconstruction does not result in the enlargement of the footprint of the development;

3. In the case of residential reconstruction, the reconstruction does not result in an increase in the number of dwelling units;

4. In the case of commercial reconstruction;

i. The reconstruction does not result in an increase in the number of parking spaces or equivalent parking area associated with the development; and

ii. The development is consistent with the Water Quality Management Plan adopted pursuant to N.J.A.C. 7:15;

5. The reconstruction does not result in additional impacts to Special Areas as defined at N.J.A.C. 7:7E-3; and

6. The reconstruction does not increase the area covered by buildings and/or asphalt or concrete pavement.

(b) Authorization under this coastal general permit is not required for repairs or maintenance, such as replacing siding, windows or roofs which is not regulated, unless the repair or maintenance is associated with an expansion of the footprint of development.

(c) In addition to the application and information required under N.J.A.C. 7:7-7.3, the following information shall be submitted:

1. Three copies of a site plan(s) clearly depicting the locations and dimensions of all existing and proposed structures, existing site conditions (including all Special Areas as defined at N.J.A.C. 7:7E-3), and all proposed filling, grading, excavation and clearing;
2. In the case of residential reconstruction, documentation that there will not be an increase in the number of dwelling units; and
3. In the case of commercial reconstruction, documentation that there will not be an increase in the number of parking spaces or equivalent parking area associated with the proposed reconstruction.

**7:7-7.8 Coastal general permit for the development of a single family home or duplex**

(a) This coastal general permit authorizes the development of a single family home or duplex and/or accessory development (such as garages, sheds, pools, driveways, grading, filling, and clearing, excluding shore protection structures), provided the single family home or duplex and accessory development are located landward of the mean high water line, and provided the single family home or duplex is not located on a bulkheaded lagoon lot.

(b) Development under this coastal general permit shall not result in the development of more than one single family home or duplex either solely or in conjunction with a previous development as defined at N.J.A.C. 7:7-2.1(b)8.

(c) Development under this coastal general permit shall comply with N.J.A.C. 7:7E-3.22, Beaches, 7:7E-3.27, Wetlands, 7:7E-3.28, Wetland Buffers, and 7:7E-3.38, Endangered or Threatened Wildlife or Vegetation Species Habitats;

(d) Development under this coastal general permit shall comply with N.J.A.C. 7:7E-3.16, Dunes, except as provided under (d)1 or 2 below:

1. Development that is located on the landward slope of a secondary or tertiary dune described at (d)1ii below, whichever is most landward, need not comply with the dunes rule, N.J.A.C. 7:7E-3.16, if the site and the development meet all of the following conditions:

i. The area of the site proposed to be developed is located greater than 500 feet landward of the mean high water line of the adjacent water body;

ii. The cross-sectional area of the primary frontal dune waterward of the proposed development, as measured above the 100-year stillwater elevation and waterward of the primary frontal dune crest, is greater than 1,100 square feet. For the purpose of this section, primary frontal dune means a continuous or nearly continuous mound or ridge of sand with relatively steep waterward and landward slopes immediately landward of and adjacent to the beach, and subject to erosion and overtopping from high tides and waves during major coastal storms. Secondary and tertiary dunes means the second and third dune mound or ridge, respectively, landward from and adjacent to the primary frontal dune;

iii. The beach area adjacent to the proposed development is either naturally stable without beach nourishment or naturally accretional without beach nourishment, as determined using the method described at N.J.A.C. 7:7E-3.19, Erosion Hazard Areas, and the information in the Department's Geographic Information System (GIS) database as found in the Historical Shorelines coverage 1836-1986; and

iv. The site disturbance, including grading, excavation and vegetation removal, is limited to that necessary to develop the single family home or duplex and/or accessory structures; or

2. Development that is located on a dune which is isolated from a beach and dune system by a paved public road, public seawall or public bulkhead, existing on July 19, 1993, need not comply with the dunes rule, N.J.A.C. 7:7E-3.16, if the site and the development meet all of the following criteria:

i. The road, seawall or bulkhead is of sufficient size to be designated as the V-zone boundary on the municipal Flood Insurance Rate Map;

ii. The road, seawall or bulkhead has eliminated the protective function of the isolated dune, by providing a significant barrier to coastal processes, including storm waves and flooding;

iii. The road, seawall or bulkhead is functional and is currently maintained by a public entity;

iv. The area of proposed construction is designated as an A-Zone, B-Zone or C-Zone on the municipal Flood Insurance Rate Map;

v. The site disturbance, including grading, excavation and vegetation removal, is limited to that necessary to develop the single family home or duplex and/or accessory structures; and

vi. The proposed development does not include the construction of a shore protection structure.

(e) Development under this coastal general permit shall comply with N.J.A.C. 7:7E-3.31, Coastal bluffs, if the site is located on the Atlantic Ocean, Delaware Bay, Raritan Bay, or Sandy Hook Bay. Coastal bluffs are defined at N.J.A.C. 7:7E-3.31(a). If the site is not located on one of the four water bodies listed above, the development shall comply with the setback requirements at (l)1 below, unless the development meets either (e)1 or 2 below:

1. The development is located in the “developed bluff area.” For the purposes of this paragraph, a “developed bluff area” is an area delineated by the limit of existing buildings, in-ground pool or tennis court that existed on July 19, 1993; or

2. The development on the coastal bluff is located landward of the developed bluff area as defined at (e)1 above, and does not exceed the cumulative surface area of the developed bluff area on the site. If all or part of the proposed development on the coastal bluff is located landward of the existing developed bluff area, an equivalent area of the existing developed bluff area shall be restored through the planting of native woody vegetation species.

(f) Development under this coastal general permit shall comply with N.J.A.C. 7:7E-3.18, Coastal High Hazard Areas, and N.J.A.C. 7:7E-3.19, Erosion Hazard Areas, except as excluded under (f)1 below;

1. Development under this coastal general permit that is located on a site partially or completely within an erosion hazard area or coastal high hazard area need not comply with the Coastal High Hazard Areas rule, N.J.A.C. 7:7E-3.18, and the Erosion Hazard Areas rule, N.J.A.C. 7:7E-3.19 if:

i. The lot was shown as a subdivided lot prior to July 19, 1993;

ii. The lot is served by a municipal sewer system; and



iii. A house or commercial building is located within 100 feet of each of the lot lines that run roughly perpendicular to the mean high water line. The 100 feet shall be measured outward from each lot line, along a line generally parallel to the mean high water line;

(g) The use of plastic under landscaped or gravel areas is prohibited. All sub-gravel liners shall be made of filter cloth or other permeable material.

(h) Any driveway shall be covered with a permeable material or else shall be pitched to drain all runoff onto permeable areas of the site.

(i) For a wooded site, site clearing shall be limited to an area no more than 20 feet from the footprint of the single family home or duplex and the area necessary for driveway, septic, and utility line installations.

(j) The development shall comply with the elevation and flood proofing requirements of the National Flood Insurance Program regulations at 44 CFR Chapter 1.

(k) For a site adjacent to or including surface water bodies or wetlands, a silt fence with a 10-foot landward return shall be erected at the limit of disturbance along the waterward and wetland sides of the development before construction begins. This fence shall be maintained and remain in place until all construction and landscaping is completed.

(l) Development under the coastal general permit shall comply with the following setbacks:

1. On a site with coastal bluffs that is not located on the Atlantic Ocean, Delaware Bay, Raritan Bay or Sandy Hook Bay, the single family home or duplex and/or accessory structures shall be set back a minimum of 10 feet from the crest of the bluff provided that the development will not result in a loss of stability of the bluff or vegetation on the bluff face. Any structure that requires excavation shall be set back one foot beyond the 10 foot setback for every foot of excavation below existing grade;

2. On an oceanfront site with existing or proposed shore protection structures, the single family home or duplex and/or accessory structures (except decks) shall be set back at least 25 feet from existing or proposed oceanfront shore protection structures. This distance shall be measured from the waterward face of a bulkhead or seawall and from the top of slope on the waterward face of the revetment. This setback shall not apply to below grade structures;

3. On a non-oceanfront site with existing or proposed shore protection structures, the single family home or duplex and/or accessory structures (except decks) shall be set back at least 15 feet from existing or proposed shore protection structures. If the single family home or duplex and/or accessory structures cannot be located at least 15 feet landward of the shore protection structure, the Department shall reduce the required setback if an engineering certification is submitted demonstrating that, after the proposed development has been constructed, the shore protection structure can be replaced within 18 inches of the existing shore protection structure and a conservation restriction in a form approved by the Department is recorded for the property which states that any reconstruction of a shore protection structure shall be within 18 inches of the existing shore protection structure. A site with coastal bluffs shall instead comply with (l)1 above;

(m) This coastal general permit does not authorize any activities regulated under the Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq.

(n) In addition to the application and information required under N.J.A.C. 7:7-7.3, the following information shall be submitted:

1. Three copies of a site plan(s) showing the following:
  - i. The mean and spring high water lines of the tidal waters at or in proximity to the site;
  - ii. Existing features at the site including topography and structures, and the limits of wetlands, dune areas, beach areas, flood hazard areas, coastal bluffs and vegetation;
  - iii. Existing roads and utilities immediately adjacent to the site;
  - iv. All proposed development, including all structures, grading, clearing and limits of disturbance; and
  - v. The limits and depth of all proposed excavation within 25 feet of the bluff crest; and

2. A Compliance Statement prepared in accordance with N.J.A.C. 7:7-6, demonstrating how the proposed development complies with (a) through (m) above, including supplemental documents as appropriate, such as maps or surveys.

**7:7-7.9 Coastal general permit for the expansion, or reconstruction (with or without expansion) of a single family home or duplex**

(a) This coastal general permit authorizes the expansion, or reconstruction (with or without expansion), of a legally constructed, habitable single family home or duplex and/or accessory development (such as garages, sheds, pools, driveways, grading, excavation and clearing, excluding shore protection structures), provided the single family home or duplex and accessory structures are located landward of the mean high water line, and provided the single family home or duplex is not located on a bulkheaded lagoon lot.

(b) Development under this coastal general permit shall not result in development of more than one single family home or duplex either solely or in conjunction with a previous development as defined at N.J.A.C. 7:7-2.1(b)8.

(c) Development under this coastal general permit shall comply with N.J.A.C. 7:7E-3.22, Beaches, 7:7E-3.27, Wetlands, 7:7E-3.28, Wetland Buffers, and 7:7E-3.38, Endangered or Threatened Wildlife or Vegetation Species Habitats;

(d) Development under this coastal general permit shall comply with N.J.A.C. 7:7E-3.16, Dunes, except as provided under (d)1 through 4 below:

1. Development that is located on the landward slope of a secondary or tertiary dune described at (d)1ii below, whichever is most landward, need not comply with the dunes rule, N.J.A.C. 7:7E-3.16, if the site and the development meet all of the following conditions:

i. The area of the site proposed to be developed is located greater than 500 feet landward of the mean high water line of the adjacent water body;

ii. The cross-sectional area of the primary frontal dune waterward of the proposed development, as measured above the 100-year stillwater elevation and waterward of the primary

frontal dune crest, is greater than 1,100 square feet. For the purpose of this section, primary frontal dune means a continuous or nearly continuous mound or ridge of sand with relatively steep waterward and landward slopes immediately landward of and adjacent to the beach, and subject to erosion and overtopping from high tides and waves during major coastal storms. Secondary and tertiary dunes means the second and third dune mound or ridge, respectively, landward from and adjacent to the primary frontal dune;

iii. The beach area adjacent to the proposed development is either naturally stable without beach nourishment or naturally accretional without beach nourishment, as determined by using the method described at N.J.A.C. 7:7E-3.19, Erosion Hazard Areas and the information in the Department's Geographical Information System (GIS) database as found in the Historical Shorelines coverage 1836-1986; and

iv. The site disturbance, including grading, excavation and vegetation removal, is limited to that necessary to expand or reconstruct the single family home or duplex and/or accessory structures;

2. Development that is located on a dune which is isolated from a beach and dune system by a paved public road, public seawall or public bulkhead, existing on July 19, 1993, need not comply with the dunes rule, N.J.A.C. 7:7E-3.16, if the site and the development meet all of the following criteria:

i. The road, seawall or bulkhead is of sufficient size to be designated as the V-zone boundary on the municipal Flood Insurance Rate Map;

ii. The road, seawall or bulkhead has eliminated the protective function of the isolated dune, by providing a significant barrier to coastal processes, including storm waves and flooding;

iii. The road, seawall or bulkhead is functional and is currently maintained by a public entity;

iv. The area of proposed construction is designated as an A-Zone, B-Zone or C-Zone on the municipal Flood Insurance Rate Map;

v. The site disturbance, including grading, excavation and vegetation removal, is limited to that necessary to expand or reconstruct the single family home or duplex and/or accessory structures; and

vi. The proposed development does not include the construction of a shore protection structure.

3. Development that is located on a dune need not comply with the dunes rule, N.J.A.C. 7:7E-3.16, if the development meets the following criteria:

- i. The single family home or duplex legally existed on July 19, 1993;
- ii. The development constructed after July 19, 1993 does not exceed a cumulative surface area of 750 square feet on the dune, excluding the area of reconstruction within the existing footprint of development and the area of development authorized under (d)4 below;
- iii. The development is located within the footprint of development of the existing single family home or duplex and/or on the landward side of the existing footprint of development and within the area between lines extended landward and perpendicular to the mean high water line from the widest shore parallel points of the existing footprint of development, except as provided at (d)3iv below;
- iv. For every 10 feet the footprint of development of the single family home or duplex is set back landward on the lot from the existing footprint of development of the single family home or duplex, the total area of development may be increased by 200 square feet in addition to that authorized in (d)3ii above, provided the additional square footage is constructed on the non-waterward side of the single family home or duplex ;
- v. The dune area waterward of the single family home or duplex is enhanced as follows:
  - (1) Sand fill shall be placed as necessary to establish a uniform dune crest elevation matching the highest dune crest elevation at the site; and
  - (2) Native dune vegetation shall be planted as necessary to establish vegetative cover in accordance with the specifications contained in Guidelines and Recommendations for Coastal Dune Restoration and Creation Projects (DEP, 1985) and/or Restoration of Sand Dunes Along the Mid-Atlantic Coast (U.S. Soil Conservation Service, 1992). These documents are available upon request from the Department's Land Use Regulation Program, P.O. Box 439, Trenton, New Jersey 08625-0439, (609) 292-0060; and
- vi. A conservation restriction for the dune areas waterward of the existing and/or approved single family home or duplex and/or accessory development is recorded in accordance with N.J.A.C. 7:7-1.5(b)18;

4. Development that is located on a dune and entails the enclosure of an existing deck, patio, or porch need not comply with the dunes rule, N.J.A.C. 7:7E-3.16, if the development meets the following criteria:

- i. The development is the enclosure of a deck, patio, or porch;
- ii. The deck, patio, or porch enclosure is located on the non-waterward side of the single family home or duplex, as defined at N.J.A.C. 7:7-1.3;
- iii. The deck, patio, or porch legally existed on July 19, 1993;
- iv. The deck, patio, or porch abuts the dwelling;
- v. The enclosure does not extend beyond the limit of the existing deck, patio, or porch as it existed on July 19, 1993;
- vi. The footprint of development of the deck, patio, or porch enclosure does not exceed 400 square feet; and
- vii. The dune area waterward of the single family home or duplex is enhanced as follows:
  - (1) Sand fill shall be placed as necessary to establish a uniform dune crest elevation matching the highest existing dune crest elevation at the site;
  - (2) Native dune vegetation shall be planted in accordance with the specifications contained in Guidelines and Recommendations for Coastal Dune Restoration and Creation Projects (DEP, 1985) and/or Restoration of Sand Dunes Along the Mid-Atlantic Coast (U.S. Soil Conservation Service, 1992). These documents are available upon request from the Department's Land Use Regulation Program, P.O. Box 439, Trenton, New Jersey 08625-0439, (609)292-0060; and
- viii. A conservation restriction for the dune areas waterward of the existing and/or approved single family home or duplex and/or accessory development is recorded in accordance with N.J.A.C. 7:7-1.5(b)18.

(e) Development under this coastal general permit shall comply with N.J.A.C. 7:7E-3.31, Coastal bluffs, if the site is located on the Atlantic Ocean, Delaware Bay, Raritan Bay, or Sandy Hook Bay. Coastal bluffs are defined at N.J.A.C. 7:7E-3.31(a). If the site is not located on one of the four water bodies listed above, the development shall comply with the setback requirements at (l)1 below, unless the development meets either (e)1 or 2 below:

1. The development is located in the "developed bluff area." For the purposes of this

paragraph, a “developed bluff area” is an area delineated by the limit of existing buildings, in-ground pool or tennis court that existed on July 19, 1993; or

2. The development on the coastal bluff is located landward of the developed bluff area as defined at (e)1 above, and does not exceed the cumulative surface area of the developed bluff area on the site. If all or part of the proposed development on the coastal bluff is located landward of the existing developed bluff area, an equivalent area of the existing developed bluff area shall be restored through the planting of native woody vegetation species.

(f) Development under this coastal general permit shall comply with N.J.A.C. 7:7E-3.18, Coastal High Hazard Areas, and N.J.A.C. 7:7E-3.19, Erosion Hazard Areas, except as excluded under (f)1 below;

1. Development under this coastal general permit that is located on a site partially or completely within an erosion hazard area or coastal high hazard area need not comply with the Coastal High Hazard Areas rule, N.J.A.C. 7:7E-3.18, and the Erosion Hazard Areas rule, N.J.A.C. 7:7E-3.19 if:

- i. The lot was shown as a subdivided lot prior to July 19, 1993;
- ii. The lot is served by a municipal sewer system; and
- iii. A house or commercial building is located within 100 feet of each of the lot lines that run roughly perpendicular to the mean high water line. The 100 feet shall be measured outward from each lot line, along a line generally parallel to the mean high water line;

(g) The use of plastic under landscaped or gravel areas is prohibited. All sub-gravel liners shall be made of filter cloth or other permeable material.

(h) Any driveway shall be covered with a permeable material or else shall be pitched to drain all runoff onto permeable areas of the site.

(i) For a wooded site, site clearing shall be limited to an area no more than 20 feet from the footprint of the single family home or duplex and the area necessary for driveway, septic, and utility line installations.

(j) The development shall comply with the elevation and flood proofing requirements of the National Flood Insurance Program regulations at 44 CFR Chapter 1.

(k) For a site adjacent to or including surface water bodies or wetlands, a silt fence with a 10-foot landward return shall be erected at the limit of disturbance along the waterward and wetland sides of the development before construction begins. This fence shall be maintained and remain in place until all construction and landscaping is completed.

(l) Development under this coastal general permit shall comply with the following setbacks:

1. On a site with coastal bluffs that are not located on the Atlantic Ocean, Delaware Bay, Raritan Bay or Sandy Hook Bay, the single family home or duplex and/or accessory structures shall be set back a minimum of 10 feet from the crest of the bluff provided that the development will not result in a loss of stability of the bluff or vegetation on the bluff face. Any structure that requires excavation shall be set back one foot beyond the 10 foot setback for every foot of excavation below existing grade;

2. On an oceanfront site with existing or proposed shore protection structures, the single family home or duplex and/or accessory structures (except decks) shall be set back at least 25 feet from existing or proposed oceanfront shore protection structures. This distance shall be measured from the waterward face of a bulkhead or seawall and from the top of slope on the waterward face of the revetment. This setback shall not apply to other below grade structures;

3. On a non-oceanfront site with existing or proposed shore protection structures, the single family home or duplex and/or accessory structures (except decks) shall be set back at least 15 feet from existing or proposed shore protection structures. If the single family home or duplex and/or accessory structures cannot be located at least 15 feet landward of the shore protection structure, the Department shall reduce the required setback if an engineering certification is submitted demonstrating that, after the proposed development has been constructed, the shore protection structure can be replaced within 18 inches of the existing shore protection structure and a conservation restriction in a form approved by the Department is recorded for the property which states that any reconstruction of a shore protection structure shall be within 18 inches of



the existing shore protection structure. A site with coastal bluffs shall instead comply with (l) 1 above;

(m) This coastal general permit does not authorize any activities regulated under the Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq.

(n) In addition to the application and additional information required under N.J.A.C. 7:7-7.3, the following information shall be submitted:

1. Three copies of a site plan(s) showing the following:
  - i. The mean and spring high water lines of the tidal waters at or in proximity to the site;
  - ii. Existing features at the site including topography and structures, and the limits of wetlands, dune areas, beach areas, flood hazard areas, coastal bluffs and vegetation;
  - iii. Existing roads and utilities immediately adjacent to the site;
  - iv. All proposed development, including all structures, grading, clearing and limits of disturbance; and
  - v. The limits and depth of all proposed excavation within 25 feet of the bluff crest; and
2. A Compliance Statement prepared in accordance with N.J.A.C. 7:7-6, demonstrating how the proposed development complies with the criteria listed (a) through (m) above, including supplemental documents as appropriate such as maps or surveys.

#### **7:7-7.10 Coastal general permit for construction of a bulkhead and placement of associated fill on a manmade lagoon**

(a) This coastal general permit authorizes the construction of a bulkhead on a lot located on a substantially developed manmade lagoon, provided that the bulkhead complies with the following:

1. The site is located on a substantially developed manmade lagoon as defined at N.J.A.C. 7:7-1.3;
2. The bulkhead shall be located at or above the spring high water line unless it is between two existing legally constructed bulkheads not more than 75 feet apart. In such cases, the

connecting bulkhead shall not extend waterward of a straight line connecting the ends of the existing bulkheads;

3. There shall be no disturbance to wetlands during construction;
4. The bulkhead is located inshore of any wetlands;
5. A minimum 10 foot return shall be constructed at each end of the bulkhead unless it is tied into an existing adjacent bulkhead; and
6. Clean fill from an upland source shall be used for backfill.

(b) In addition to the application and information required under N.J.A.C. 7:7-7.3, the following information shall be submitted:

1. Three copies of a site plan(s) showing the following:
  - i. The mean and spring high water lines of the tidal waters at the site;
  - ii. Existing features at the site, including structures and the upper and lower limits of wetlands and beach areas;
  - iii. Bulkheads or other retaining structures on adjacent properties; and
  - iv. All proposed structures including deadmen, tie backs, and returns; and
2. A Compliance Statement prepared in accordance with N.J.A.C. 7:7-6, demonstrating how the proposed bulkhead complies with (a) above, including supplemental documents as appropriate, such as maps or surveys.

#### **7:7-7.11 Coastal general permit for the construction of a revetment at a single family home or duplex lot**

(a) This coastal general permit authorizes the construction of a revetment, as defined at N.J.A.C. 7:7-1.3, at a single family home or duplex lot that is not part of a larger development owned or controlled by the same property owner and which has an eroding shoreline along any shore other than the Atlantic Ocean, Delaware Bay, Raritan Bay, or Sandy Hook Bay. (The coastal general permit for the construction of gabions at a single family home is found at N.J.A.C. 7:7-7.12.)

(b) Construction of the revetment shall comply with the following:

1. The revetment slope shall not be steeper than one vertical to two horizontal;
2. The placement of rip rap in the waterway shall be limited to that necessary to protect the shoreline;
3. Fill material placed to achieve the required slope shall be:
  - i. Added only to the upland;
  - ii. Free of large stones; and
  - iii. Firmly compacted before revetment construction begins;
4. Filter fabric (or graded stone filter) shall be installed to prevent loss of slope materials through voids in the revetment material;
5. Revetment stones shall be angular and blocky, not rounded;
6. The toe of the revetment shall be located at least three feet below existing grade to prevent undercutting;
7. Weight of individual stone shall be determined by a design engineer based on wave height range for the site;
8. Placement of a revetment in dunes or wetlands is prohibited. Any wetlands disturbed by the construction activities shall be restored to pre-construction conditions; and
9. The revetment shall be placed in such a way as to not result in instability of a coastal bluff or cause erosion of adjacent properties or offshore areas.

(c) In addition to the application and additional information required under N.J.A.C. 7:7-7.3, the following information shall be submitted:

1. Three copies of a site(s) plan showing the following:
  - i. The mean high, mean low and spring high water lines of the tidal waters at the site;
  - ii. Existing features at the site including topography and structures;
  - iii. The upper and lower limits of wetlands, beach, dune, and coastal bluff areas at the site and on adjacent waterfront properties;
  - iv. Bulkheads or other retaining structures on adjacent properties;
  - v. The proposed location of the revetment and limit of disturbance; and

vi. Cross sections of the proposed revetment in relationship to mean high, mean low water, and spring high water lines; and

2. A Compliance Statement prepared in accordance with N.J.A.C. 7:7-6, demonstrating how the proposed revetment complies with (a) and (b) above, including supplemental documents as appropriate, such as maps or surveys.

**7:7-7.12 Coastal general permit for the construction of gabions at a single family/duplex lot**

(a) This coastal general permit authorizes the construction of gabions, as defined at N.J.A.C. 7:7-1.3, at a single family home or duplex lot that is not part of a larger development owned or controlled by the same property owner and which has an eroding shoreline along any shore other than the Atlantic Ocean, Delaware Bay, Raritan Bay, or Sandy Hook Bay. (The coastal general permit for the construction of revetments at a single family home is found at N.J.A.C. 7:7-7.11.)

(b) The design and construction of the gabions shall comply with the following:

1. The gabions shall be laid along the face of the shore such that the waterward slope of the gabions, as measured along the face of the gabions, shall be no steeper than one vertical to two horizontal. However, if the steepness and height of the slope of the non-storm shoreline profile preclude construction of a sloped gabion system, then the waterward slope of a step faced gabion system, as measured along a line connecting the gabions shall be no steeper than one vertical to one horizontal.

2. The placement of the gabions in the waterway shall be limited to that necessary to protect the shore;

3. The toe of the gabions shall be located at least three feet below existing grade to prevent undercutting;

4. Rip rap shall be placed along the waterward toe of the gabion only if the Department determines that such rip-rap is required to limit scour potential and the areas and volume of rip rap are minimized;

5. Placement of gabions on dunes or in wetlands is prohibited. Any wetlands disturbed by the construction activities shall be restored to pre-construction conditions;

6. The gabions shall be placed in such a way as to not result in instability of a coastal bluff or cause erosion of adjacent properties or offshore areas;

7. The gabions shall be tightly packed with four inch to eight inch diameter stone (to minimize movement of the interior stone and consequent damage to the wire) and the edges shall be laced together with steel wire;

8. Individual gabions shall be wired together;

9. The size and number of gabions shall be determined by a design engineer based on wave height range for the site; and

10. Fill material placed to achieve the required slope shall be:

i. Added only to the upland;

ii. Free of large stones; and

iii. Firmly compacted before construction of the gabions begins.

(c) In addition to the application and additional information required under N.J.A.C. 7:7-7.3, the following information shall be submitted:

1. Three copies of a site plan(s) showing the following:

i. The mean high, mean low, and spring high water lines of the tidal waters at the site;

ii. Existing features at the site including topography and structures;

iii. The upper and lower limits of wetlands, beach, dune, and coastal bluff areas at the site and on adjacent waterfront properties;

iv. Bulkheads or other retaining structures on adjacent properties;

v. The proposed location of the gabions and limit of disturbance;

vi. Cross sections of the proposed gabions in relationship to mean high and mean low water; and

2. A Compliance Statement prepared in accordance with N.J.A.C. 7:7-6, demonstrating how the proposed gabion system complies with (a) and (b) above, including supplemental documents as appropriate, such as maps or surveys.

**7:7-7.13 Coastal general permit for the construction of support facilities at legally existing and operating commercial marinas**

(a) This coastal general permit authorizes the construction of support facilities at legally existing and operating commercial marinas including marinas operated by public agencies, commissions and authorities.

(b) The construction of the following support facilities listed at 1 through 7 below, is acceptable provided they comply with the specific conditions for each facility and also with (c) below:

1. Construction of boat rack systems/marina support buildings including, but not limited to, showroom, maintenance/repair, marine supplies, bait/tackle, boat sales, dock masters office buildings, sheds, excluding residential development provided:

- i. The building(s) shall be no more than one story or level;
- ii. The building(s) shall be set back a minimum of 100 feet from the mean high water line;
- iii. The building(s) and rack system shall be set back a minimum of 50 feet from the inland limit of any wetlands;
- iv. The building(s) and rack system shall be located in an existing cleared and maintained area of the site;
- v. The marina must provide or maintain restrooms and at least one portable toilet emptying receptacle in accordance with N.J.A.C. 7:7E-7.3(d); and
- vi. Marinas with dockage for 25 or more vessels or any one vessel with live aboard arrangement must provide for adequate and conveniently located pumpout stations.

2. Construction of restroom facilities provided:

- i. Discharge from the facilities shall either be to a municipal or regional treatment plant where practicable, or to a subsurface sewage disposal system designed with capacity to accommodate the new restroom facilities in accordance with N.J.A.C. 7:9A;
- ii. Restrooms shall provide both hot and cold water and shall be maintained in a sanitary, warm, dry, brightly-lit and well ventilated condition;
- iii. The restroom building shall be set back a minimum of 100 feet from the mean high water line unless the Department determines that there is no alternate location; and
- iv. The restroom building shall be set back a minimum of 50 feet from the inland limit of any wetlands, unless the Department determines that there is no alternate location.

3. Construction of pumpout facilities (marine sanitation devices) provided:
  - i. Discharge from the facility shall either be to a municipal or regional treatment plant where practicable or to a subsurface sewage disposal system; or
  - ii. Discharge to a holding tank with waste being removed by a licensed septage hauler. A marina employing this method shall maintain a record of waste removal.
4. Construction of fences, water lines and new sewer lines to connect restrooms and pumpouts to existing sewer lines provided:
  - i. The construction has no prudent or feasible alternative alignment which would have less impact to Special Areas as defined at N.J.A.C. 7:7E-3;
  - ii. The construction shall not result in permanent or long term loss of Special Areas as defined at N.J.A.C. 7:7E-3; and
  - iii. The construction utilizes appropriate measures to mitigate adverse environmental impacts to the maximum extent feasible, such as restoration of disturbed vegetation, habitats, and land and water features.
  - iv. For sewer lines only:
    - (1) The sewer line receives a Treatment Works Approval from the Department's Bureau of Connection and Construction Permits;
    - (2) The sewer line shall not result in adverse secondary impacts; and
    - (3) The sewer line connects to an existing sewer line located on-site or immediately adjacent to the site;
5. Construction of a gasoline pump(s) and associated pipes and tanks on the upland portion of the marina provided:
  - i. The marina has available adequate floating containment booms and absorbent materials in the event of hydrocarbon spills;
  - ii. Fuel pumps include back pressure cutoff valves. Main cut-off valves shall be available both at the dock and in the upland area of the marina; and
  - iii. Any other required approvals for the construction of underground or above ground storage tanks are obtained.
6. Construction of boat handling facilities including, but not limited to: winches, gantries, railways, platforms and lifts, hoists, cranes, fork lifts and ramps provided:

i. The boat handling facility (excluding boat ramp and railways) is located landward of the mean high water line; and

ii. The boat handling facility is not located in a wetland area.

7. The one time construction of a single marina support building not exceeding a footprint of 120 square feet provided the building is located on the upland portion of the marina and is not located within wetlands.

(c) The construction of the support facilities listed at (b) 1 through 7 above shall also comply with the following:

1. The marina complies with N.J.A.C. 7:7E-7.3(d), the standards relevant to the construction of marinas.

2. Public access shall be provided in accordance with the public access to the waterfront rule, N.J.A.C. 7:7E-8.11;

3. Trash receptacles along with adequate fish cleaning areas, including separately marked dispensers for organic refuse, shall be provided; and

4. The development is consistent with the Water Quality Management Plan adopted pursuant to N.J.A.C. 7:15.

(d) In addition to the application and information required under at N.J.A.C. 7:7E-7.3, the following information shall be submitted:

1. Three copies of a site(s) plan showing the following:

i. The mean high, mean low and spring high water lines of the tidal waters at the site;

ii. Existing features at the site including, topography, structures, utilities, beach areas and dune areas;

iii. The upper and lower limits of wetlands within 150 feet of the proposed limit of disturbance;

iv. The proposed development including all limits of disturbance, structures and building heights, grading, and existing and proposed clearing areas;

v. The location of all existing and proposed public access areas; and

vi. Where sewers are to be used, the location of the existing sewer line abutting the site; and



2. A Compliance Statement prepared in accordance with N.J.A.C. 7:7-6, demonstrating how the proposed marina support facility complies with (a) through (c) above, including supplemental documents as appropriate, such as maps or surveys; and

3. A copy of any previous coastal permit for the site.

#### **7:7-7.14 Coastal general permit for reconstruction of a legally existing functioning bulkhead**

(a) This coastal general permit authorizes the reconstruction of a legally existing functioning bulkhead in-place or upland of the existing bulkhead. This coastal general permit also authorizes the reconstruction of a legally existing bulkhead within 18 inches outshore of the existing bulkhead when a timber bulkhead is used. This coastal general permit also authorizes the construction of a legally existing bulkhead up to a maximum of 24 inches outshore of the existing bulkhead when a vinyl bulkhead is used, provided the vinyl bulkhead abuts the pilings of the existing bulkhead. The distance outshore is measured from the waterward face of the original bulkhead alignment of the existing bulkhead to the waterward face of the proposed bulkhead.

1. Reconstruction of certain bulkhead structures in place located below the mean high water line may be exempt from the Waterfront Development Law pursuant to N.J.A.C. 7:7-2.3(d)4.

(b) The reconstruction of a legally existing bulkhead as described in (a) above is acceptable provided that:

1. The replacement bulkhead is located upland of any wetlands;

2. With the exception of individual single family/duplex properties which are not part of a larger development, public access shall be maintained or provided in accordance with the public access to the waterfront rule (N.J.A.C. 7:7E-8.11);

3. The construction of bulkheads subject to wave run up forces (V-zones) shall be designed and certified by a professional engineer to withstand the forces of wave runup, and shall include a splash pad on the landward side. The splash pad must have a minimum width of 10 feet, and shall be constructed of concrete, asphalt or other erosion resistant material. If a cobblestone or

similar splash pad is utilized, appropriate sub-base and filter cloth shall be incorporated into the design;

4. The placement of rip-rap along the seaward toe of the replacement bulkhead structure may qualify for this coastal general permit if the Department determines that such rip rap is required to limit scour potential and the areas and volume of rip rap are minimized;

5. The structure will not create net adverse shoreline movement downdrift, including erosion or shoaling;

6. The construction shall have no adverse impact to any Special Areas defined at N.J.A.C. 7:7E-3; and

7. Clean fill from an upland source shall be used for backfill.

(c) In addition to the application and information required under N.J.A.C. 7:7-7.3, the following information shall be submitted:

1. Three copies of a site plan(s) showing the following:

i. The mean and spring high water lines of the tidal waters at the site;

ii. Existing features at the site including, all waterfront structures, existing bulkhead, and the upper and lower limits of wetlands, beach areas and dune areas;

iii. Bulkheads or other retaining structures on adjacent properties;

iv. The proposed new bulkhead including returns and tie backs and splash pad if located within the V-zone; and

v. The location of all existing and proposed public access areas; and

2. A Compliance Statement prepared in accordance with N.J.A.C. 7:7-6, demonstrating how the proposed reconstructed bulkhead complies with (a) and (b) above, including supplemental documents as appropriate such as maps or surveys.

#### **7:7-7.15 Coastal general permit for investigation, cleanup, removal or remediation of hazardous substances.**

(a) This coastal general permit authorizes all regulated activities above the mean high water line that are undertaken, authorized or otherwise expressly approved in writing by the Department for the investigation, cleanup, removal or remediation of hazardous substances as

defined by or pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., or pollutants, as defined by the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., provided the following conditions are met:

1. If the proposed cleanup activity is to take place in Special Areas as defined at N.J.A.C. 7:7E-3, the coastal general permit authorization shall be issued only if the Department finds that there are no practicable alternatives to the investigation, cleanup, removal and remediation of the hazardous substances or pollutants that would involve less or no disturbance or destruction of Special Areas as defined at N.J.A.C. 7:7E-3;
2. Mitigation may be required in accordance with the Coastal Zone Management rules, N.J.A.C. 7:7E, for disturbance to Special Areas as defined at N.J.A.C. 7:7E-3; and
3. For coastal wetlands, mitigation shall be performed according to the procedures for mitigation at N.J.A.C. 7:7E-3.27 and 7:7E-3B. The mitigation plan may be incorporated as part of the document by which the Department approves the clean-up or it may be submitted as part of the coastal general permit application. The coastal general permit will not be issued until the mitigation plan is submitted and approved by the Program according to the standards at N.J.A.C. 7:7E-3.27 and 7:7E-3B.

(b) In addition to the application and information required under N.J.A.C. 7:7-7.3, the following information shall be submitted:

1. Three copies of a site plan(s) showing the following:
  - i. The mean and spring high water lines of the tidal waters at the site;
  - ii. The limits of all Special Areas as defined at N.J.A.C. 7:7E-3 within 150 feet of the proposed limits of disturbance on site and at the material disposal site;
  - iii. The proposed limits of disturbance and method of investigation, clean up, removal or remediation; and
  - iv. The restoration plan; and
2. A Compliance Statement prepared in accordance with to N.J.A.C. 7:7-6, demonstrating how the proposed hazardous waste cleanup complies with (a) above, including supplemental documents as appropriate, such as maps or surveys;
3. Photographs of the site prior to the remediation; and

4. The Department's case control number.

#### **7:7-7.16 Coastal general permit for the landfall of utilities**

(a) This coastal general permit authorizes the landfall of utilities including cable (that is electric, television and fiber optics), telecommunication, petroleum, natural gas, water and sanitary sewer lines constructed in tidal water bodies authorized pursuant to the Waterfront Development Law or Flood Hazard Area Control Act.

(b) Construction authorized under this coastal general permit is acceptable provided:

1. The section of the utility line that extends landward from the mean high water line of the tidal water body shall be no more than 150 feet long and shall connect to an existing utility line in the adjacent upland;
2. The width of the area disturbed within the right-of-way of the project is no more than 20 feet;
3. Excavated areas for the placement of the utility landfall shall be returned to the pre-existing elevation using the original soil, if feasible or other suitable material to backfill from a depth of 18 inches to the original grade and be revegetated;
4. The utility landfall shall have no adverse impacts to Special Areas as defined in the Coastal Zone Management rules N.J.A.C. 7:7E-3;
5. A silt fence and/or other soil erosion controls shall be installed prior to excavation and shall remain in place until final restoration is complete;
6. The staging area and construction equipment shall not be placed directly into the tidal water. Construction equipment shall be land based or based on barges;
7. All underground cutting agents/lubricants shall be contained and properly disposed. Use of a vacuum truck may be required for large drilling operations;
8. The location of existing facilities prior to excavation shall be performed pursuant to the Underground Facility Protection Act, P.L. 1994, c.118 (N.J.S.A. 48:2-73 et seq.); and
9. The sanitary sewer line is consistent with the Water Quality Management Plan adopted pursuant to N.J.A.C. 7:15.

(c) In addition to the application and information required under N.J.A.C. 7:7-7.3, the following information shall be submitted:

1. Three copies of a site plan(s) showing the following:
  - i. The mean and spring high water lines of the tidal waters at the site;
  - ii. The upper and lower limits of wetlands, beach areas, coastal bluffs, endangered or threatened wildlife or vegetation habitats and dune areas within 150 feet of the proposed limit of disturbance;
  - iii. The proposed limit(s) of disturbance;
  - iv. The restoration plan;
  - v. The location of the existing and proposed utility; and
  - vi. The location and type of soil erosion and sediment control measures to be used during construction; and
2. A Compliance Statement prepared in accordance with N.J.A.C. 7:7-6, demonstrating how the proposed landfall of the utility complies with (a) and (b) above, including supplemental documents as appropriate, such as maps and surveys.

#### **7:7-7.17 Coastal general permit for the construction of recreational facilities at public parks**

(a) This coastal general permit authorizes the construction of the following recreational facilities at parks which are publicly owned or controlled for the purposes of public access. Construction of the facilities listed below is acceptable provided that the construction has no adverse impact on any Special Areas defined at N.J.A.C. 7:7E-3 and provided that the facility complies with the specific conditions listed below for each facility.

1. Construction of the following facilities provided they are not located on a dune or in a wetland, except as noted at (a)3 below:
  - i. Playground equipment including, but not limited to, swings, slides, and jungle gyms;
  - ii. Picnic tables, benches and grills which are not seasonal;
  - iii. Gazebos, rain shelters and sheds provided they do not exceed a footprint 200 square feet;
  - iv. Pathways, bicycle paths and jogging and nature trails and associated fitness equipment provided they are not located on a beach; and

v. Fences which do not require permanent footings.

2. Construction of restroom facilities not located on a beach, dune or in a wetland, provided that:

- i. The restroom facilities connect to an existing sewer line located within or abutting the park, or facilities discharge to a subsurface sewerage disposal system;
- ii. The connection at (a)2i above shall be consistent with the 208 Water Quality Management Plan;
- iii. The restroom building shall be set back a minimum of 100 feet from the mean high water line unless the Department determines that there is no alternate location; and
- iv. The restroom building shall be set back a minimum of 50 feet from the inland limit of any wetlands, unless the Department determines there is no alternate location.

3. Trail or boardwalk construction in wetlands is acceptable provided that:

- i. The width of the trail or boardwalk does not exceed six feet, except for barrier free trails or boardwalks designed in accordance with the Barrier Free Subcode of the Standard Uniform Construction Code, N.J.A.C. 5:23-7. The construction of restrooms, gazebos, rain shelters, or any covered or enclosed structure is not authorized on the boardwalk or trail;
- ii. The height of the structure over wetlands other than wetlands regulated under the Freshwater Wetlands Protection Act and implementing rules at N.J.A.C. 7:7A shall be a minimum of four feet regardless of width;
- iii. The project does not interfere with the natural hydrology of the area; and
- iv. The project does not encroach upon or adversely affect the habitat of any threatened or endangered species.

(b) In addition to the application and information required under N.J.A.C. 7:7-7.3, the following information shall be submitted:

- 1. Three copies of a site plan(s) showing the following:
  - i. The mean and spring high water lines of the tidal waters at the site;
  - ii. The proposed development including all limits of disturbance, structures, grading and clearing;

iii. Within 150 feet of the proposed limit(s) of disturbance, the upper and lower limits of wetlands, beach areas, endangered and threatened wildlife or vegetation habitats and dune areas; and

2. A Compliance Statement prepared in accordance with N.J.A.C. 7:7-6, demonstrating how the proposed recreational facility complies with (a) above, including supplemental documents as appropriate such as maps or surveys.

#### **7:7-7.18 Coastal general permit for bulkhead construction and placement of associated fill**

(a) This coastal general permit authorizes the construction of a bulkhead and associated fill at a single family/duplex lot on a natural water body provided that the proposed bulkhead complies with the following:

1. Legally existing functional bulkheads are located on the lots adjacent to the proposed bulkhead and are no more than 75 feet apart;
2. The bulkhead will be located at or above the spring high water line;
3. The bulkhead is located a minimum of five feet inshore of any wetlands;
4. The bulkhead shall not be located on a dune or oceanfront beach;
5. Clean fill from an upland source shall be used for backfill;
6. The bulkhead shall not be located further waterward than the bulkheads on the adjacent properties;
7. In the event that the bulkhead will be located landward of the adjacent bulkheads, the new bulkhead shall connect to the bulkhead on either side;
8. The construction of bulkheads subject to wave run up forces (V-zones) shall be designed and certified by a professional engineer to withstand the forces of wave run-up, and shall include a splash pad on the landward side. The splash pad must have a minimum width of 10 feet, and shall be constructed of concrete, asphalt or other erosion resistant material. If a cobblestone or similar splash pad is utilized, appropriate sub-base and filter cloth shall be incorporated into the design;
9. The placement of rip-rap along the seaward toe of the bulkhead structure may qualify for this coastal general permit if the Department determines that such rip rap is required to limit scour potential and the areas and volume of rip rap are minimized; and

10. There shall be no disturbance to wetlands during construction;

(b) This general permit is not available for activities subject to the Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq.

(c) In addition to the application and information required under N.J.A.C. 7:7-7.3, the following information shall be submitted:

1. Three copies of a site plan(s) showing the following:
  - i. The mean high and spring high tide lines of the tidal waters at the site;
  - ii. The upper and lower limits of wetlands, beach and dunes areas;
  - iii. Existing features both at the site and on adjacent waterfront sites including all waterfront structures and existing bulkhead and other retaining structures; and
  - iv. The proposed new bulkhead including returns and tie backs and splash pad if located within the V-Zone; and
2. A Compliance Statement prepared in accordance with N.J.A.C. 7:7-6, demonstrating how the proposed bulkhead and associated fill complies with (a) and (b) above, including supplemental documents as appropriate, such as maps and survey.

**7:7-7.19 Coastal general permit for the construction of piers, docks including jet ski ramps, pilings and boatlifts in man-made lagoons**

(a) This coastal general permit authorizes the construction of piers, docks (including jet ski ramps), pilings and boatlifts in man-made lagoons provided that:

1. The structures shall be located on individual single family or duplex lots and shall be for recreational/non-commercial use;
2. The structures shall not extend beyond a distance of 20 percent of the width of a man-made lagoon;
3. The width of the dock or pier shall not exceed twice the clearance between the structure and the surface of the ground below or the water surface at mean high water, except for floating docks. For example, an eight foot wide dock must be elevated a minimum of four feet above the water surface at mean high water;



4. The maximum width of the structure shall be eight feet, except where crossing wetlands, where the proposed structure shall be constructed perpendicular to the shoreline to access sufficient water depth and shall not exceed six feet in width. In any case, the height of the structure over wetlands shall be a minimum of four feet;
5. Any wetlands disturbed during construction shall be restored to pre-project conditions;
6. The proposed structure does not hinder navigation or access to adjacent docks, piers, moorings or water areas;
7. A minimum of eight feet of open water shall be provided between any docks including jet ski ramps, if the combined width of any existing or proposed docks over the water exceeds eight feet;
8. For docks which are perpendicular to the adjacent bulkhead or shoreline, construction and placement of the dock shall be a minimum of four feet from all property lines;
9. The space between horizontal planking is maximized and the width of horizontal planking is minimized to the maximum extent practicable. Under normal circumstances, a minimum of 3/8 inch, 1/2 inch, 3/4 inch or one inch space is to be provided for four inch, six inch, eight to 10 inch, or 12 inch plus wide planks respectively;
10. Jet ski ramps are inclined floating docks which are typically attached to existing docks for the purpose of docking jet skis. Jet ski ramps shall not exceed eight feet in width; and
11. For sites which have existing dock structures exceeding eight feet in width over water areas and/or wetlands, which were constructed prior to September 1978 and for which the applicant proposes to increase the coverage over the water area or wetland by increasing the number or size of boat slips, docks or piers, the existing oversized structures must be reduced to a maximum of eight feet in width.

(b) In addition to the application and information required under N.J.A.C. 7:7-7.3, the following information shall also be submitted:

1. Three copies of a site plan(s) showing the following:
  - i. The mean high and mean low water lines of the tidal waters at the site;
  - ii. The upper and lower limits of wetlands at the site;

- iii. Existing structures including all waterfront structures (docks, pilings and bulkheads) on the project site and adjacent waterfront properties;
  - iv. The opposite side of the lagoon; and
  - v. The proposed structures and boat mooring area; and
2. A Compliance Statement prepared in accordance with N.J.A.C. 7:7-6, demonstrating how the proposed dock, pier, jet ski ramp, pilings or boat lift complies with (a) above, including supplemental documents as appropriate such as maps or surveys;

**7:7-7.20 Coastal general permit for minor maintenance dredging in man-made lagoons**

(a) This coastal general permit authorizes minor maintenance dredging in man-made lagoons provided that:

- 1. The volume of the material to be dredged shall not exceed 100 cubic yards;
- 2. The proposed depth shall not exceed six feet below mean low water;
- 3. Dredged material shall be placed on an upland site and shall be stabilized;
- 4. The proposed slope from the waterward edge of any wetlands to the nearest edge of the dredged area shall not exceed three horizontal to one vertical; and
- 5. The proposed depth does not exceed the water depth outshore of the dredged area.

(b) In addition to the application information required under N.J.A.C. 7:7-7.3, the following information shall be submitted:

- 1. Three copies of a site plan(s) showing the following:
  - i. The mean high and mean low water lines of the tidal waters at the site;
  - ii. The upper and lower limits of wetlands on site and on adjacent lagoonfront properties;
  - iii. The existing and proposed water depths in the area to be dredged;
  - iv. Proposed cross sections of area to be dredged;
  - v. The location of the dredged material disposal site;
  - vi. The method of dredging; and
  - vii. The method of stabilization of dredging material; and

2. A Compliance Statement prepared in accordance with N.J.A.C. 7:7-6, demonstrating how the proposed minor maintenance dredging complies with (a) above, including supplemental documents as appropriate, such as maps or surveys.

#### **7:7-7.21 Coastal general permit for the stabilization of eroded shorelines**

(a) This coastal general permit authorizes the stabilization of eroded shorelines along tidal waterways, excluding the Atlantic Ocean, provided that the proposed method complies with all of the following:

1. The stabilization materials are limited to live branch cuttings, live facings, live stakes, vegetative cuttings, vegetated earth buttresses, choir fiber products, fiber plugs, plants and clusters, selected plant materials, fiber pallets, fiber carpet, and wood stake anchor systems. Materials shall be installed in accordance with the construction guidelines of Chapter 16 – “Streambank and Shoreline Stabilization Protection,” of the National Engineering Handbook (NEH), Part 650, published by the United States Department of Agriculture. This coastal general permit does not authorize the use of geotubes, stone, concrete, gabions, wood sheathing, pvc pipe, used tires, discarded Christmas trees, or other material not specifically stated above.

2. The stabilization of the eroded shoreline shall have no adverse impact on Special Areas defined at N.J.A.C. 7:7E-3;

3. No disturbance to wetlands shall occur;

4. Where shoreline stabilization will occur outshore of a wetlands, the construction shall result in minimum feasible alteration or impairment of natural tidal circulation;

5. Where shoreline stabilization will occur outshore of a wetlands, the construction shall result in minimum feasible alteration or impairment of the natural contour or the natural vegetation of the wetlands;

6. For sites where grading is required, no grading shall occur below the spring high water line, and all soil or other graded materials shall be pulled back away from the water. Grading by pushing soil or other material below the spring high water line is prohibited;

7. The placement of bioengineering materials, with the exception of plantings, shall be limited to that necessary to protect the shoreline;

8. Plant material shall be chosen and installed in accordance with “Vegetation For Tidal Shoreline Stabilization In the Mid-Atlantic States,” published by the US Department of Agriculture, Soil Conservation service, Broomall, Pennsylvania;

9. For projects on public lands, public access to the waterfront shall be provided and maintained during construction, and thereafter; and

10. If the Department determines that construction has resulted in adverse shoreline sand movement, including erosion or shoaling, the Department may require the permittee to remove the shoreline stabilization materials.

(b) In addition to the applications and information required under N.J.A.C. 7:7-7.3, the following information shall also be submitted:

1. Three copies of a site(s) plan showing the following:

- i. Mean high, mean low and spring high water lines of the tidal waters at the site;
  - ii. Existing waterfront structures at the site and on adjacent waterfront sites;
  - iii. The upper and lower limits of wetlands, beach areas, and dune areas at the site and on adjacent waterfront properties;
  - iv. The location and cross section of the proposed stabilization materials in relationship to mean high and mean low water;
  - v. On public lands, the location of the existing and proposed public access to the waterfront;
- and

2. A compliance statement prepared in accordance with N.J.A.C. 7:7-6, demonstrating how the proposed stabilization of the eroded shoreline complies with (a) above, including supplemental documents as appropriate, such as maps and surveys.

#### **7:7-7.22 Coastal general permit for avian nesting structures**

(a) This coastal general permit authorizes the construction of pile supported avian nesting structures provided:

1. The construction shall not alter or impair the natural contour or vegetation of the wetlands. Protective measures such as wide track vehicles and mats shall be utilized during construction;

2. Disturbance to wetlands is restored except for those permanently impacted by the pilings;  
and

3. The construction of the pile supported nesting structure shall not adversely impact Special Areas as defined at N.J.A.C. 7:7E-3.

(b) In addition to the application and information required under N.J.A.C. 7:7-7.3, the following information shall also be submitted:

1. Three copies of a site plan(s) showing the following:
  - i. The location of the proposed nesting structure;
  - ii. Mean high water line of the tidal waters at the site;
  - iii. Existing features at the site including structures, and all Special Areas as defined at 7:7E-3, including the upper and lower limits of wetlands, beach areas, and dune areas; and
  - iv. Details of the proposed nesting structure;

#### **7:7-7.23 Coastal general permit for modification of existing electrical substations**

(a) This coastal general permit authorizes the modification of existing electrical substations within the existing fence line to maintain substation and electrical load and system reliability provided that:

1. The activities occur within the cleared, maintained portions of the site within the existing fenced area; and
2. The activities shall not have an adverse impact on Special Areas as defined at N.J.A.C. 7:7E-3;

(b) In addition to the application and information required under N.J.A.C. 7:7-7.3, the following information shall also be submitted:

1. Three copies of a site plan(s) showing:
  - i. Existing fence, existing limits of clearing, existing and proposed structures;
  - ii. The upper and lower limits of any wetlands within 150 feet of the fenced area; and

2. A Compliance Statement prepared in accordance with N.J.A.C. 7:7-6, demonstrating how the proposed modification to the existing electrical substation complies with (a) above, including supplemental documents as appropriate, such as maps and surveys.

**7:7-7.24 Coastal general permit for the legalization of the filling of tidelands**

(a) This coastal general permit authorizes the legalization of the filling of any lands formerly flowed by the tide provided:

1. The filling occurred after 1914;
2. The fill appears on the applicable Tidelands Map adopted by the Tidelands Resource Council (base map photography dated 1977/78); and
3. Public access shall be provided in accordance with the public access to the waterfront rule (N.J.A.C. 7:7E-8.11);

(b) The legalization of the filling of any lands formerly flowed by the tide associated with a single family home that is not part of a larger development, is eligible for a permit-by-rule, see N.J.A.C. 7:7-7.2(a)9.

(c) In addition to the application and information required under N.J.A.C. 7:7-7.3, the following information shall be submitted:

1. Three copies of a site plan(s) showing the following:
  - i. The location of the tidelands claim line as shown on the applicable Tidelands Map adopted by the Tidelands Resource Council (base map photography dated 1977/78) and current mean high water line at or adjacent to the site; and
  - ii. The location of all existing and proposed public access areas;
2. Proof that a tidelands instrument has been obtained for all filled tidelands areas or evidence that an application for a tidelands instrument has been submitted to the Bureau of Tidelands Management. This coastal general permit authorization shall not be valid until the permittee has received a Tidelands instrument.
3. A Compliance Statement prepared in accordance with N.J.A.C. 7:7-6, demonstrating how the site complies with the Public Access to the Waterfront rule, N.J.A.C. 7:7E-8.11.

### **7:7-7.25 Coastal general permit for the construction of telecommunication towers**

(a) This coastal general permit authorizes the construction of telecommunication towers such as cellular telephone and radio towers, including access roads and associated support buildings located upland of the mean high water line provided:

1. The development shall not be located in or on dunes, beaches, wetlands, bay islands, coastal bluffs or wild and scenic river corridors;
2. The limits of disturbance associated with the development shall not exceed 0.25 acres;
3. The development shall be located a minimum of 50 feet landward of the mean high water line except on sites defined as filled water's edge sites at N.J.A.C. 7:7E-3.23 where the development shall instead be located a minimum of 100 feet landward of the mean high water line;
4. The development shall be setback a minimum of 50 feet from the inland limit of any wetlands; and
5. The development shall comply with the endangered or threatened wildlife or vegetation species habitats rule, N.J.A.C. 7:7E-3.38 and the Critical wildlife habitat rule, N.J.A.C. 7:7E-3.39.

(b) In addition to the application and information required under N.J.A.C. 7:7-7.3, the following information shall be submitted:

1. Three copies of a site plan(s) showing the following:
  - i. The proposed development including all limits of disturbance, structures, grading and clearing;
  - ii. All existing features at the site including the mean high and spring high water lines, and the upper limits beaches and dunes; and
  - iii. The upper limits of wetlands and coastal bluffs on and adjacent to the site; and
2. A Compliance Statement prepared in accordance with N.J.A.C. 7:7-6, demonstrating how the proposed telecommunication tower complies with (a) above, including supplemental documents as appropriate, such as maps and surveys

**7:7-7.26 Coastal general permit for the construction of certain structures related to the tourism industry at hotels and motels, commercial developments and multi-family residential developments over 75 units**

(a) This coastal general permit authorizes the construction of equipment storage containers and sheds, stage platforms, bleachers, portable restrooms, food concession stands, gazebos, lockers, canopied shelters, and wooden walkways related to the tourism industry, at hotels and motels, commercial developments and multi-family residential developments over 75 units provided:

1. The structure remains in place only from May 1 through September 30;
2. The structure is not located on a dune, coastal bluff, or in a wetland;
3. Placement of the structure does not include the excavation, grading or filling of a beach;
4. The structure shall have no adverse impact on Special Areas defined at N.J.A.C. 7:7E-3;
5. The structure is located a minimum of 50 feet landward of the mean high water line, except on beaches where the development is located on the most landward portion of the beach;
6. The structure is located a minimum of 50 feet from any wetlands;
7. If the structure is proposed on a beach, the structure does not unreasonably conflict with ocean views or other beach uses; and
8. If the structure is proposed on a beach, the beach is open to the public.

(b) In addition to the application and information required under N.J.A.C. 7:7-7.3, the following information shall be submitted:

1. Three copies of a site plan(s) showing the following:
  - i. The mean high water line of the tidal waters at the site;
  - ii. The location and type of all proposed structures;
  - iii. The upper limits of wetlands and beach and dune areas, and endangered and threatened wildlife or vegetation habitats; and
2. A Compliance Statement prepared in accordance with N.J.A.C. 7:7-6, demonstrating how the proposed recreational facility complies with (a) above, including supplemental documents as appropriate such as maps or surveys.



(c) Seasonal and temporary structures related to the tourism industry at public developments are not regulated as public development under CAFRA pursuant to N.J.A.C. 7:7-1.3 and 2.1(b)2viii.

## **SUBCHAPTER 8. ENFORCEMENT**

### **7:7-8.1 Authority for N.J.S.A. 13:19-1 et seq. (CAFRA) and N.J.S.A. 12:5-1 et seq. (Waterfront Development)**

(a) Whenever the Department finds that a person has violated any provision of N.J.S.A. 13:19-1 et seq., or any regulation, rule, permit, or order adopted or issued by the Department pursuant thereto, the Department may, singly or in combination, pursue the remedies specified in 1 through 4 below. Pursuit of any of the remedies specified under this section shall not preclude the seeking of any other remedy specified.

1. Issue an order requiring the person found to be in violation to comply in accordance with N.J.A.C. 7:7-8.2;
2. Bring a civil action for injunctive and other relief in accordance with N.J.A.C. 7:7-8.13;
3. Levy a civil administrative penalty in accordance with N.J.A.C. 7:7-8.5 or 7:7-8.6; and/or
4. Bring an action for a civil penalty in accordance with N.J.A.C. 7:7-8.7.

(b) Any development or improvement enumerated in N.J.S.A. 12:5-3 and in N.J.S.A. 13:1D-29 et seq., or included within any rule or regulation adopted pursuant thereto, which is commenced or executed without first obtaining approval, or contrary to the conditions of approval, as provided in N.J.S.A. 12:5-3 and in N.J.S.A. 13:1D-29 et seq., shall be deemed to be a purpresture, a public nuisance and a violation of N.J.S.A. 12:5-1 et seq. and shall be abated in the name of the State by one or more of the following actions:

1. The issuance of an administrative order in accordance with N.J.A.C. 7:7-8.2;
2. The commencement of a civil action by the Department in Superior Court for injunctive or other appropriate relief in accordance with N.J.A.C. 7:7-8.13; and/or
3. The levying of an administrative penalty by the Department in accordance with N.J.A.C. 7:7-8.10 and 8.11.

(c) The Department has the power, as enumerated in N.J.S.A. 13:1D-9, and consistent with constitutional requirements, to enter and inspect any building or place for the purposes of ascertaining compliance or noncompliance with any codes, rules and regulations of the Department.

**7:7-8.2 Procedures for issuing an administrative order pursuant to N.J.S.A. 13:19-1 et seq. (CAFRA) and N.J.S.A. 12:5-1 et seq. (Waterfront Development)**

(a) Whenever the Department finds that a person has violated any provision of N.J.S.A. 13:19-1 et seq., or any regulation, rule, permit, or order adopted or issued by the Department pursuant to N.J.S.A. 13:19-1 et seq., the Department may issue an order specifying the provision or provisions of the act, regulation, rule, permit, or order of which the person is in violation citing the action which constituted the violation, ordering abatement of the violation, and giving notice to the person of his or her right to a hearing on the matters contained in the order. The ordered party shall have 20 days from receipt of the order within which to deliver to the Department a written request for a hearing in accordance with N.J.A.C. 7:7-8.4. After the hearing and upon finding that a violation has occurred, the Department may issue a final order. If no hearing is requested, then the order shall become final after the expiration of the 20-day period. A request for hearing shall not automatically stay the effect of the order.

(b) Any development or improvement commenced or executed in violation of the Waterfront Development Act, N.J.S.A. 12:5-1 et seq., may be abated by the State by the issuance of an administrative order by the Commissioner specifying that there has been a violation of the provisions of this section, or any applicable rule, regulation or permit; setting forth the facts forming the basis for the issuance of the order; and specifying the course of action necessary to correct the violation. Procedures to request a hearing on an administrative order issued pursuant to this subsection are contained in N.J.A.C. 7:7-8.11.

**7:7-8.3 Procedures for assessment, settlement and payment of civil administrative penalties for violations of N.J.S.A. 13:19-1 et seq. (CAFRA)**

(a) To assess a civil administrative penalty under N.J.S.A. 13:19-1 et seq., the Department

shall notify the violator by certified mail (return receipt requested) or by personal service. This Notice of Civil Administrative Penalty Assessment (NOCAPA) shall:

1. Identify the section of the statute, rule, administrative order or permit violated;
2. Concisely state the alleged facts which constitute the violation;
3. Specify the amount of the civil administrative penalty to be imposed and the fact that interest may be due in accordance with (c) below; and
4. Advise the violator of the right to request an adjudicatory hearing pursuant to the procedures in N.J.A.C. 7:7-8.4.

(b) Payment of the civil administrative penalty is due upon receipt by the violator of the Department's final order in a contested case, or when a notice of civil administrative penalty assessment becomes a final order, as follows:

1. If no hearing is requested pursuant to N.J.A.C. 7:7-8.4, a notice of civil administrative penalty assessment becomes a final order and is deemed received on the 21st day following receipt of the notice of civil administrative penalty assessment by the violator;
2. If the Department denies the hearing request pursuant to N.J.A.C. 7:7-8.4(b), a notice of civil administrative penalty assessment becomes a final order on the 21st day following receipt of the notice of civil administrative penalty assessment by the violator;
3. If the Department denies the hearing request pursuant to N.J.A.C. 7:7-8.4(c), a notice of civil administrative penalty assessment becomes a final order upon receipt of notice of such denial; or
4. If the Department grants the hearing request, a notice of civil administrative penalty assessment becomes a final order upon receipt by the violator of a final order in a contested case.

(c) In addition to the amount of the civil administrative penalty that is due and owing pursuant to (b) above, the violator shall also pay to the Department the interest on the amount of the penalty, at the rate established by the New Jersey Supreme Court for interest rates on judgments as set forth in the Rules Governing the Courts of the State of New Jersey. Interest shall accrue on the amount of the civil administrative penalty due and owing from the date the payment is due and continuing until the civil administrative penalty is paid in full with interest if:

1. A violator does not pay a civil administrative penalty imposed pursuant to a final order within 30 days of the date that payment is due; or

2. A violator fails to make a civil administrative penalty payment pursuant to a payment schedule entered into with the Department within 30 days of the date that payment is due.

(d) The Department may, in its discretion, settle any civil administrative penalty assessed pursuant to N.J.A.C. 7:7-8.5 or 8.6 according to the following factors:

1. Mitigating or extenuating circumstances not previously considered in the notice of civil administrative penalty assessment pursuant to N.J.A.C. 7:7-8.5(g)4, 8.6(g)5 or 8.8(h)6;

2. The timely implementation by the violator of measures leading to compliance not previously considered in the assessment of penalties pursuant to N.J.A.C. 7:7-8.5(f)1i or 8.6(g)3, including measures to clean up, reverse or repair environmental damage caused by the violation, or to remove the violation;

3. The full payment by the violator of a specified part of the civil administrative penalty assessed if made within a time period established by the Department in an administrative order and provided that the violator waives the right to request an adjudicatory hearing on the civil administrative penalty; or

4. Any other terms or conditions acceptable to the Department.

**7:7-8.4 Procedures to request an adjudicatory hearing to contest an administrative order and/or a notice of civil administrative penalty assessment; procedures for conducting adjudicatory hearings for violations of N.J.S.A. 13:19-1 et seq. (CAFRA)**

(a) To request an adjudicatory hearing to contest an administrative order and/or a notice of civil administrative penalty assessment issued pursuant to N.J.S.A. 13:19-1 et seq., the violator shall submit the following information in writing to the Department at Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection, CN 402, Trenton, New Jersey 08625-0402:

1. The name, address, and telephone number of the violator and its authorized representative;
2. The violator's defenses to each of the findings of fact stated in short and plain terms;
3. An admission or denial of each of the findings of fact. If the violator is without knowledge

or information sufficient to form a belief as to the truth of a finding, the violator shall so state and this shall have the effect of a denial. A denial shall fairly meet the substance of the findings denied. When the violator intends in good faith to deny only a part or a qualification of a finding, the violator shall specify so much of it as is true and material and deny only the remainder. The violator may not generally deny all of the findings but shall make all denials as specific denials of designated findings. For each finding the violator denies, the violator shall allege the fact or facts as the violator believes it or them to be;

4. Information supporting the request and specific reference to or copies of other written documents relied upon to support the request;
5. An estimate of the time required for the hearing (in days and/or hours); and
6. A request, if necessary, for a barrier-free hearing location for physically disabled persons.

(b) If the Department does not receive the written request for a hearing within 20 days after receipt by the violator of the notice of a civil administrative penalty assessment and/or an administrative order being contested, the Department shall deny the hearing request.

(c) If the violator fails to include all the information required by (a) above, the Department may deny the hearing request.

(d) All adjudicatory hearings held pursuant to this section shall be conducted in accordance with the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

#### **7:7-8.5 Civil administrative penalties for failure to obtain a permit for regulated activities pursuant to N.J.S.A. 13:19-1 et seq. (CAFRA)**

(a) The Department may assess a civil administrative penalty pursuant to this section of not more than \$25,000 for each violation of N.J.A.C. 7:7-2.1.

(b) Each violation of N.J.A.C. 7:7-2.1 shall constitute an additional, separate and distinct violation.

(c) To assess a civil administrative penalty pursuant to this section, the Department shall identify the civil administrative base penalty within the table in (e) below by determining the number of points pursuant to (d) below. The civil administrative penalty shall be the amount within the table in (e) below, unless adjusted pursuant to (f) and/or (g) below.

(d) The Department shall determine the number of points assigned to each violation by summing the points according to (d)1 through 3 below.

1. Conduct of violator:

Minor	1 point
Moderate	2 points
Major	3 points

i. Major shall include any intentional, deliberate, purposeful, knowing or willful act or omission by the violator;

ii. Moderate shall include any unintentional but foreseeable act or omission by the violator;

or

iii. Minor shall include any other conduct not included in (d)1i or ii above.

2. Area of disturbance in square feet (sf):

Less than or equal to 270 sf	1 point
271 sf to 5,000 sf	2points
5,001 sf to 10,000 sf	3 points
10,001 sf to 20,000 sf	4 points
Greater than 20,000 sf	5 points

The Department shall determine the area of disturbance as that area which was actually disturbed as a result of the violation.

3. Unauthorized activity conducted in special area or resources:

Each special area or resource involved-- 1 point

The Department shall assess one point for each special area or resource, as defined in N.J.A.C. 7:7E-3, in which the unauthorized activity occurred.

(e) The table of civil administrative base penalties is as follows:

Points	Base Penalty
1-3	\$500
4	\$1,000
5	\$5,000
6	\$10,000
7	\$15,000
8	\$20,000
9	\$25,000

(f) The Department shall adjust the amount of the base penalty assessed pursuant to (e) above based upon the mitigating penalty component as calculated in (f)1i or ii below, if applicable.

1. The Department shall multiply the base penalty dollar amount by the multiplier for either of the applicable mitigating factors in (f)1i or ii below to obtain the mitigating penalty component. Where neither mitigating factor in (f)1i or ii below applies, the civil administrative penalty shall be the civil administrative base penalty determined pursuant to (e) above, unless adjusted pursuant to (g) below.

Mitigating Factor	Multiplier
i. Where the nature, timing and effectiveness of any measures taken by the violator to remove the unauthorized development and to	0.50

mitigate the effects of the violation for  
which the penalty is being assessed results  
in compliance within 30 days of receipt of  
the notice of violation from the  
Department; or

ii. Where a complete application is submitted 0.50  
within 30 days of receipt of the notice of  
the violation from the Department and a  
permit is subsequently obtained for the  
unauthorized development without the need  
of any modification, mitigation or restoration.

2. To obtain the civil administrative penalty, the Department shall subtract the mitigating  
penalty component calculated pursuant to (f)1 above, where applicable, from the base penalty.

(g) The Department may, in its discretion, adjust the amount of any penalty assessed pursuant  
to (e) or, where applicable, (f) above based upon any or all of the factors listed in (g)1 through 4  
below. No such factor constitutes a defense to any violation. In no case shall the assessed  
penalty be less than 25 percent of the penalty pursuant to (e) above, or more than the statutory  
limit.

1. The compliance history of the violator;
2. The frequency with which any violation of N.J.S.A. 13:19-1 et seq., rules, permit or order  
occurred;
3. The deterrent effect of the penalty; and/or
4. Any other mitigating, extenuating or aggravating circumstances.

**7:7-8.6 Civil administrative penalties for violations of N.J.S.A. 13:19-1 et seq. (CAFRA)  
other than failure to obtain a permit for regulated activities**

(a) The Department may, in its discretion, assess a civil administrative penalty pursuant to



this section of not more than \$25,000 for each violation of N.J.S.A. 13:19-1 et seq., or any regulation, rule, permit, or order adopted or issued by the Department pursuant to N.J.S.A. 13:19-1 et seq., other than those violations addressed under N.J.A.C. 7:7-8.5. The Department shall assess penalties under this section in lieu of N.J.A.C. 7:7-8.5 when N.J.A.C. 7:7-8.5 is not applicable to the violation.

(b) Each violation of N.J.S.A. 13:19-1 et seq., or any rule promulgated, any administrative order or permit issued pursuant to N.J.S.A. 13:19-1 et seq., shall constitute an additional, separate and distinct violation.

(c) Where any requirement of N.J.S.A. 13:19-1 et seq., or any rule promulgated, any administrative order or permit issued pursuant to N.J.S.A. 13:19-1 et seq., may pertain to more than one act, condition, or occurrence, the failure to comply with such requirement as it pertains to each such act, condition, or occurrence shall constitute an additional, separate and distinct violation.

(d) The Department may assess a civil administrative penalty for violations described in this section on the basis of the seriousness of the violation and the conduct of the violator at the mid-point of the following ranges, unless adjusted pursuant to (g) below.

#### SERIOUSNESS

		Major	Moderate	Minor
CONDUCT	Major	\$20,000-	\$15,000-	\$10,000-
		\$25,000	\$20,000	\$15,000
	Moderate	\$15,000-	\$10,000-	\$5,000-
		\$20,000	\$15,000	\$10,000

Minor	\$10,000-	\$5,000-	\$125-
	\$15,000	\$10,000	\$5,000

(e) The seriousness of the violation shall be determined as major, moderate or minor as follows:

1. Major seriousness shall apply to any violation which has caused or has the potential to cause serious harm to human health or the environment;
2. Moderate seriousness shall apply to any violation which has caused or has the potential to cause substantial harm to human health or the environment; or
3. Minor seriousness shall apply to any violation not included in (e)1 or 2 above.

(f) The conduct of the violator shall be determined as major, moderate or minor as follows:

1. Major conduct shall include any intentional, deliberate, purposeful, knowing or willful act or omission by the violator;
2. Moderate conduct shall include any unintentional but foreseeable act or omission by the violator; and
3. Minor conduct shall include any other conduct not included in (f)1 or 2 above.

(g) The Department may, in its discretion, adjust the amount determined pursuant to (d), (e) and (f) above to assess a civil administrative penalty in an amount no greater than the maximum amount nor less than the minimum amount in the range described in (d) above, on the basis of any or a combination of the factors listed in (g)1 through 5 below. No such factor constitutes a defense to any violation:

1. The compliance history of the violator;
2. The number and frequency of violation(s) by the violator;
3. The measures taken by the violator to mitigate the effects of the current violation;
4. The deterrent effect of the penalty; and/or
5. Any other extenuating, mitigating or aggravating circumstances.

#### **7:7-8.7 Civil penalty for violations of N.J.S.A. 13:19-1 et seq. (CAFRA)**

(a) Any person who violates the provisions of N.J.S.A. 13:19-1 et seq., any regulation, rule, permit, or order adopted or issued by the Department pursuant to N.J.S.A. 13:19-1 et seq., an administrative order or a court order issued pursuant to N.J.S.A. 13:19-1 et seq., or who fails to pay a civil administrative penalty in full pursuant to N.J.A.C. 7:7-8.3, shall be subject, upon order of a court, to a civil penalty of not more than \$25,000 for each violation, and each day during which a violation continues shall constitute an additional, separate, and distinct offense.

(b) Any penalty established pursuant to this section may be imposed and collected with costs in a summary proceeding pursuant to the Penalty Enforcement Law, N.J.S.A. 2A:58-1 et seq. The Superior Court and the municipal court shall have jurisdiction to enforce the provisions of the Penalty Enforcement Law in connection with N.J.S.A. 13:19-1 et seq.

**7:7-8.8 Civil administrative penalties for violations of N.J.S.A. 12:5-1 et seq. (Waterfront Development)**

(a) The Department may assess a civil administrative penalty pursuant to this section of not more than \$1,000 for each development or improvement commenced or executed in violation of N.J.S.A. 12:5-3, or any rule promulgated or permit issued pursuant to N.J.S.A. 12:5-1 et seq.

(b) Each development or improvement commenced or executed in violation of N.J.S.A. 12:5-3, or any rule promulgated or permit issued pursuant to N.J.S.A. 12:5-1 et seq., shall constitute an additional, separate and distinct violation.

(c) Where any requirement N.J.S.A. 12:5-3, or any rule promulgated or permit issued pursuant to N.J.S.A. 12:5-1 et seq., may pertain to more than one act, condition, or occurrence, the failure to comply with such requirement as it pertains to each such act, condition, or occurrence shall constitute an additional, separate and distinct violation.

(d) To assess a civil administrative penalty pursuant to this section, the Department shall:

1. Identify the civil administrative penalty within the matrix in (e) below by:

- i. Determining the seriousness of the violation pursuant to (f) below; and
  - ii. Determining the conduct of the violator pursuant to (g) below.
2. The civil administrative penalty shall be the amount within the matrix in (e) below, unless adjusted pursuant to (h) below.

(e) The matrix of civil administrative penalties is as follows:

		SERIOUSNESS		
		Major	Moderate	Minor
CONDUCT	Major	\$1,000	\$900	\$750
	Moderate	\$900	\$700	\$500
	Minor	\$750	\$500	\$250

(f) The seriousness of the violation shall be determined according to the category of activity regulated under N.J.A.C. 7:7-2.3, as follows:

1. Minor: Four or fewer pilings;
2. Moderate: Docks 100 square feet or less, breakwaters 40 linear feet or less or other similar structures;
3. Major: All other structures or activities; or those violations defined as minor or moderate which have a permanent adverse effect on a special area as defined in N.J.A.C. 7:7E-3.

(g) The Department shall determine the conduct of a violator as major, moderate or minor as follows:

1. Major shall include any intentional, deliberate, purposeful, knowing or willful act or omission by the violator;
2. Moderate shall include any unintentional but foreseeable act or omission by the violator;
3. Minor shall include any other conduct not included in (g)1 or 2 above.

(h) The Department may, in its discretion, adjust the amount of any penalty assessed pursuant to (d) above based upon any or all of the factors listed in (h)1 through 6 below. No such factor constitutes a defense to any violation. In no case shall the assessed penalty be less than 50 percent of the penalty determined pursuant to (d) above, or more than the statutory limit.

1. The compliance history of the violator;
2. The frequency with which any violation of N.J.S.A. 12:5-1 et seq., or rules promulgated, or permits issued pursuant to N.J.S.A. 12:5-1 et seq. occurred;
3. Where the nature, timing and effectiveness of any measures taken by the violator to mitigate the effects of the violation for which the penalty is being assessed results in compliance within 30 days of receipt of the notice of the violation from the Department or where a complete permit application is submitted within 30 days of receipt of the notice of the violation from the Department and a permit is subsequently obtained in accordance with N.J.S.A. 12:5-1 et seq., the assessed penalty may be reduced by 50 percent;
4. Where a permit is obtained in accordance with N.J.S.A. 12:5-1 et seq. without the need of any modification, mitigation or restoration and has not been considered under (h)3 above;
5. The deterrent effect of the penalty; and/or
6. Any other mitigating, extenuating or aggravating circumstances.

**7:7-8.9 Civil administrative penalty for continuing violation of N.J.S.A. 12:5-1 et seq. (Waterfront Development)**

The Department may assess an additional penalty of not more than \$100.00 for each day during which a violation continues after receipt of an administrative order from the Department pursuant to N.J.A.C. 7:7-8.2(b).

### **7:7-8.10 Procedures for assessment, settlement and payment of civil administrative penalties pursuant to N.J.S.A. 12:5-1 et seq. (Waterfront Development)**

(a) To assess a civil administrative penalty under N.J.S.A. 12:5-1 et seq., the Department shall notify the violator by certified mail (return receipt requested) or by personal service. This notice of civil administrative penalty assessment shall:

1. Identify the section of the statute, rule or permit violated;
2. Concisely state the facts which constitute the violation;
3. Specify the amount of the civil administrative penalty to be imposed; and
4. Advise the violator of the right to request an adjudicatory hearing pursuant to the procedures in N.J.A.C. 7:7-8.11.

(b) Payment of the civil administrative penalty is due upon receipt by the violator of the Department's final order.

1. If no hearing is requested pursuant to N.J.A.C. 7:7-8.11, the Department shall issue a final order assessing the penalty specified in the notice of civil administrative penalty assessment; or
2. If the Department denies the hearing request, the Department shall issue a final order assessing the penalty specified in the notice of civil administrative penalty assessment; or
3. If the Department grants the hearing request, a notice of civil administrative penalty assessment becomes a final order upon receipt by the violator of a final order in a contested case.

(c) The Department may, in its discretion, settle any civil administrative penalty assessed pursuant to N.J.A.C. 7:7-8.8 and 8.9 according to the factors identified in (c)1 through 4 below. No such factor constitutes a defense to any violation:

1. Mitigating or extenuating circumstances not considered in the notice of civil administrative penalty assessment;
2. The timely implementation by the violator of measures leading to compliance not previously considered in the assessment of penalties pursuant to N.J.A.C. 7:7-8.8 and 8.9, including measures to clean up, reverse or repair environmental damage caused by the violation,

or to remove the violation;

3. The full payment by the violator of a specified part of the civil administrative penalty assessed if made within a time period established by the Department in an administrative order provided that the violator waives the right to request an adjudicatory hearing on the civil administrative penalty; and/or

4. Any other terms or conditions acceptable to the Department.

**7:7-8.11 Procedures to request an adjudicatory hearing to contest an administrative order and/or a notice of civil administrative penalty assessment; procedures for conducting adjudicatory hearings for violations of N.J.S.A. 12:5-1 et seq. (Waterfront Development)**

(a) To request an adjudicatory hearing to contest an administrative order and/or a notice of civil administrative penalty assessment issued pursuant to N.J.S.A. 12:5-1 et seq., the violator shall submit the following information in writing to the Department at Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection, PO 402, Trenton, New Jersey 08625-0402:

1. The name, address, and telephone number of the violator and its authorized representative;
2. The violator's defenses to each of the findings of fact stated in short and plain terms;
3. An admission or denial of each of the findings of fact. If the violator is without knowledge or information sufficient to form a belief as to the truth of a finding, the violator shall so state and this shall have the effect of a denial. A denial shall fairly meet the substance of the findings denied. When the violator intends in good faith to deny only a part or a qualification of a finding, the violator shall specify so much of it as is true and material and deny only the remainder. The violator may not generally deny all of the findings but shall make all denials as specific denials of designated findings. For each finding the violator denies, the violator shall allege the fact or facts as the violator believes it or them to be;
4. Information supporting the request and specific reference to or copies of other written documents relied upon to support the request;
5. An estimate of the time required for the hearing (in days and/or hours); and
6. A request, if necessary, for a barrier-free hearing location for physically disabled persons.

(b) If the Department does not receive the written request for a hearing within 21 days after receipt by the violator of the notice of a civil administrative penalty assessment and/or an administrative order being challenged, the Department shall deny the hearing request.

(c) If the violator fails to include all the information required by (a) above, the Department may deny the hearing request.

(d) All adjudicatory hearings held pursuant to this section shall be conducted in accordance with the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

**7:7-8.12 Civil penalties for violations of N.J.S.A. 13:9A-1 et seq. (Wetlands Act of 1970)**

(a) Any person who violates any order by the Department, or violates any provisions of N.J.S.A. 13:9A-1 et seq., shall be subject, upon order of a court, to a civil penalty of not more than \$1,000.

(b) Any penalty ordered as provided in this section may be imposed and collected with costs in a summary proceeding pursuant to the Penalty Enforcement Law, N.J.S.A. 2A:58-1 et seq. The Superior Court and the municipal court shall have jurisdiction to enforce the provisions of the Penalty Enforcement Law in connection with N.J.S.A. 13:9A-1 et seq.

**7:7-8.13 Civil actions for violations of N.J.S.A. 13:19-1 et seq. (CAFRA), N.J.S.A. 12:5-1 et seq. (Waterfront Development), and N.J.S.A. 13:9A-1 et seq. (Wetlands Act of 1970)**

(a) The Department may institute an action or proceeding in the Superior Court for injunctive and other relief, including the appointment of a receiver, for any violation of N.J.S.A. 13:19-1 et seq., 13:9A-1 et seq. and 12:5-1 et seq. or any regulation, rule, permit, or order



adopted or issued by the Department pursuant to any of these acts, and the court may proceed in the action in a summary manner. Such relief may include, singly or in combination:

1. A temporary or permanent injunction;
2. Assessment against the violator for any costs incurred by the Department in removing, correcting or terminating the violation of any provision of any of the acts, or any regulation or rule adopted, or permit or order issued, by the Department pursuant to any of these acts, for which the action under this section may have been brought; and/or
3. A requirement that the violator restore the site of the violation to the maximum extent practicable and feasible.

(b) For violations of N.J.S.A. 13:19-1 et seq., the Department may institute an action or proceeding in the Superior Court for the assessment against the violator for any costs incurred by the Department in terminating the adverse effects upon the land, or upon water or air quality, resulting from any violation of any provision of N.J.S.A. 13:19-1 et seq., or any rule promulgated or any permit or order issued by the Department pursuant to N.J.S.A. 13:19-1 et seq., for which the action under this section may have been brought.

### **7:7-8.14 Severability**

If any provision of this subchapter or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications thereof, and to this end, the provisions of this subchapter are declared to be severable.

## **SUBCHAPTER 9 (Reserved).**

## **SUBCHAPTER 10. COASTAL PERMIT APPLICATION FEES**

### **7:7-10.1 Purpose and scope**

- (a) This subchapter sets forth the fees for all coastal permit applications.
1. The application fee for Waterfront Development permits is found at N.J.A.C. 7:7-10.2;
  2. The application fee for Coastal Wetland permits is found at N.J.A.C. 7:7-10.3;

3. The application fee for CAFRA permits is found at N.J.A.C. 7:7-10.4;
4. The standards for assessing a single permit fee for a single project requiring multiple permits including Waterfront Development, Coastal Wetlands, CAFRA, Freshwater Wetlands or Stream Encroachment permits are found at N.J.A.C. 7:7-10.5; and
5. The fees for requesting a modification of a coastal permit are found at N.J.A.C. 7:7-10.6.

(b) For the purposes of this subchapter, the term “construction cost” means the project cost, not including financing or insurance charges, of that portion of a project which is subject to review for a permit pursuant to CAFRA, the Waterfront Development Law or Wetlands Act of 1970.

(c) Any fee required under this Chapter that is subject to N.J.A.C. 7:1L shall be payable in installments in accordance with N.J.A.C. 7:1L.

#### **7:7-10.2 Application fees for Waterfront Development permits**

- (a) The application fee for each of the following developments shall be \$250.00:
  1. Any development requiring a coastal general permit pursuant to N.J.A.C. 7:7-7; or
  2. Any development consisting solely of capital repairs or reconstruction with all work taking place above the mean high water elevation on piles or other support structures or taking place landward of the mean high water line or the identical structural replacement of piles or other supports in the same location.
- (b) The application fee for any waterfront development taking place landward of the mean high water line shall be calculated as follows:
  1. The fee for a residential development consisting of one or two dwelling units, as defined at N.J.A.C. 7:7-1.3, shall be \$500.00 per unit. The fee for a residential development consisting of a single duplex shall be \$500.00.
  2. The fee for all other residential developments shall be \$3,000 plus:
    - i. \$50.00 per dwelling unit, as defined at N.J.A.C. 7:7-1.3, for the first 300 units;
    - ii. \$40.00 per dwelling unit, as defined at N.J.A.C. 7:7-1.3, for units 301 to 600; and

iii. \$30.00 per dwelling unit, as defined at N.J.A.C. 7:7-1.3, for all units in excess of 600.

3. The fee for non-residential developments shall be calculated based on the following schedule:

Construction Cost	Fees
\$0 to \$50,000	\$1,450 + $\frac{1}{2}$ of one percent of construction costs
\$50,001 to \$100,000	\$1,700 + one percent of construction costs above \$50,000
\$100,001 to \$200,000	\$2,200 + $1\frac{1}{4}$ percent of construction costs above 100,000
\$200,001 to \$350,000	\$3,450 + $1\frac{1}{2}$ percent of construction costs above \$200,000
Greater than \$350,000	\$5,700 + one percent of construction costs above \$350,000

i. The fee payable at the time of application shall not exceed \$30,000. If the fee calculated under this formula would have exceeded \$30,000, the Department will document its actual costs for review and processing of the application and the estimated cost of determining compliance with the conditions of the permit. If such costs exceed \$30,000, the applicant shall pay a supplemental fee to cover such costs. The Department shall provide the applicant with documentation of such costs when a supplemental fee is charged.

4. The fee for mixed residential and non-residential development shall be the sum of the residential and non-residential development fee as calculated under (b)1 or 2 and 3 above.

(c) The application fee for all other waterfront developments taking place waterward of the mean high water line shall be as follows:

1. The fee for residential site improvements for a single private residential unit or duplex, including, but not limited to: shore structures (bulkheads, revetments and gabions) piers and docks, walkways and activities associated with a single private residential unit or duplex, shall be \$250.00 plus one half of one percent of the construction cost above \$10,000.

2. The fee for all other activities requiring a waterfront development permit shall be based on the following schedule:

Construction Cost	Fees
\$0 to \$50,000	\$1,450 + $\frac{1}{2}$ of one percent of construction costs

\$50,001 to \$100,000	\$1,700 + one percent of construction costs above \$50,000
\$100,001 to \$200,000	\$2,200 + 1 ¼ percent of construction costs above 100,000
\$200,001 to \$350,000	\$3,450 + 1 ½ percent of construction costs above \$200,000
Greater than \$350,000	\$5,700 + one percent of construction costs above \$350,000

i. The fee payable at the time of application shall not exceed \$30,000. If the fee calculated under this formula would have exceeded \$30,000, the Department will document its actual costs for review and processing of the application and the estimated cost of determining compliance with the conditions of the permit. If such costs exceed \$30,000, the applicant shall pay a supplemental fee to cover such costs. The Department shall provide the applicant with documentation of such costs when a supplemental fee is charged.

### **7:7-10.3 Application fees for Coastal Wetland permits**

(a) The application fee for a Wetlands Act of 1970 permit (“Coastal Wetlands permit”) shall be one percent of the construction costs, or a minimum of \$250.00 for residential dock construction associated with a single family or duplex dwelling unit, and a minimum of \$500.00 for all other regulated developments.

(b) The application fee for review of a coastal general permit application pursuant to N.J.A.C. 7:7 shall be \$250.00.

### **7:7-10.4 Application fees for CAFRA permits**

(a) The application fee for residential developments requiring a CAFRA permit shall be calculated as follows:

1. The fee for a residential development consisting of one or two dwelling units, as defined at N.J.A.C. 7:7-1.3, shall be \$500.00 per unit. The fee for a residential development consisting of a single duplex shall be \$500.00.

2. The fee for all other residential developments shall be \$3,000 plus:

- i. \$50.00 per dwelling unit, as defined at N.J.A.C. 7:7-1.3, for the first 300 units;
- ii. \$40.00 per dwelling unit, as defined at N.J.A.C. 7:7-1.3, for units 301 to 600; and
- iii. \$30.00 per dwelling unit, as defined at N.J.A.C. 7:7-1.3, for all units in excess of 600.

(b) The fee for non-residential developments requiring a CAFRA permit shall be calculated as follows:

1. The fee for commercial, public or industrial development located on a beach or dune or located between the mean high water line of any tidal waters, or the landward limit of a beach or dune, whichever is most landward, and a point 150 feet landward of the mean high water line of any tidal waters, or the landward limit of a beach or dune, whichever is most landward, shall be calculated based on the following schedule:

Construction Cost	Fees
\$0 to \$50,000	\$1,450 + $\frac{1}{2}$ of one percent of construction costs
\$50,001 to \$100,000	\$1,700 + one percent of construction costs above \$50,000
\$100,001 to \$200,000	\$2,200 + $1\frac{1}{4}$ percent of construction costs above \$100,000
\$200,001 to \$350,000	\$3,450 + $1\frac{1}{2}$ percent of construction costs above \$200,000
Greater than \$350,000	\$5,700 + one percent of construction costs above \$350,000

2. The fee for commercial, public or industrial developments located beyond 150 feet landward of the mean high water line of any tidal waters or the landward limit of a beach or dune, whichever is most landward, shall be \$3,500 plus \$500.00 per acre included in the site plan, except as provided at (b)2i-iv below.

i. For a proposed linear development, the fee shall be \$3,500 plus \$500.00 per acre to be disturbed. For the purposes of this section, "linear development" means land uses such as roads, railroads, sewerage and stormwater management pipes, gas and water pipelines, electric, telephone and other transmission lines and the rights-of-way therefor, which have the basic function of connecting two points. Linear development shall not mean residential, commercial, office or industrial buildings, improvements within a development such as utility lines or pipes, or internal circulation roads.

ii. For a proposed mining operation, as defined at N.J.A.C. 7:7E-7.8, the fee shall be \$3,500 plus \$100.00 per acre disturbed.

iii. For a proposed development associated with a solid waste landfill the fee shall be \$3,500.

iv. For a proposed public development to be located entirely within a publicly owned park or recreation area, the fee shall be \$3,500 plus \$100.00 per acre disturbed.

3. For a non-residential commercial development that straddles the regulatory zone between the first 150 feet review zone and the remainder of the CAFRA area and does not trigger the higher regulatory threshold set forth at N.J.A.C. 7:7-2.1(a)5, the fee shall be calculated considering the entire development using the formula found at (b)1 above.

4. For a non-residential commercial development that straddles the regulatory zone between the first 150 feet review zone and the remainder of the CAFRA area and does trigger the higher regulatory threshold set forth at N.J.A.C. 7:7-2.1(a)5, the fee shall be calculated considering the entire development using the formula found at (b)2 above.

5. For a public or industrial development that straddles the regulatory zone between the first 150 feet review zone and the remainder of the CAFRA area, the fee shall be calculated considering the entire development using the formula found at (b)2 above.

(c) The application fee for mixed residential and non-residential development requiring a CAFRA permit shall be the sum of the residential and non-residential development fees as calculated under (a) and (b) above.

(d) The application fee payable at the time of application for the CAFRA permits at (a) through (c) above shall not exceed \$30,000. If the fee calculated under this section exceeds \$30,000, the Department will document its actual costs for review and processing of the application and the estimated cost of determining compliance with the conditions of the permit. If such costs exceed \$30,000, the applicant shall pay a supplemental fee to cover such costs. The Department shall provide the applicant with documentation of such costs when a supplemental fee is charged.

(e) The application fee for the review of a coastal general permit application pursuant to N.J.A.C. 7:7-7 shall be \$250.00.

(f) The application fee for the review and processing of a request for an exemption letter

certifying that a development is exempt from the requirements of CAFRA shall be \$125.00.

#### **7:7-10.5 Standards for assessing a single permit application fee**

(a) The Department shall assess a single permit application fee for a development which requires more than one of the following permits, if the permit applications are submitted and processed simultaneously: CAFRA permits; waterfront development permits; coastal wetlands permits; stream encroachment permits; or freshwater wetlands permits (including individual permits, general permits, and transition area waivers) issued under N.J.A.C. 7:7A. The application fee for the project is equal to the sum of the following:

1. The single highest permit application fee for the above listed permits required for the project; and
2. Seventy five percent of the sum of the permit application fees for all other permits required for the project.

#### **7:7-10.6 Application fees for requests for modifications of coastal permits**

(a) The fees for requests to modify coastal permits in accordance with N.J.A.C. 7:7-4.10 and 7.3(a) are as follows:

1. The fee for a minor modification to a Waterfront Development, Coastal Wetlands, or CAFRA permit is \$100.00;
2. The fee for a major modification to an Upland Waterfront Development or CAFRA permit is 20 percent of the total original permit application fee, with a minimum fee of \$250.00 and a maximum fee of \$5,000.00; and
3. The fee for a modification of a coastal general permit is \$100.00.

### **ADMINISTRATIVE HEARING REQUEST CHECKLIST AND TRACKING FORM FOR PERMITS**

I. Permit Being Appealed:

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Title and Type of Permit

II. Person Requesting Hearing:

_____ Name/Company	_____ Name of Attorney
_____ Address	_____ Address of Attorney

III. Please Include the Following Information as Part of Your Request:

- A. The date the permittee received the final permit;
- B. A copy of the permit, list of all permit conditions, and issues contested;
- C. The legal and factual questions at issue;
- D. A statement as to whether or not the permittee raised each legal and factual issue{s} during the public comment period on the permit;
- E. Suggested revised or alternative permit conditions;
- F. An estimate of the time required for the hearing;
- G. A request, if necessary, for a barrier-free hearing location for physically disabled persons;
- H. A clear indication of any willingness to negotiate a settlement with the Department prior to the Department's processing of your hearing request to the Office of Administrative Law; and
- I. This form, completed, signed and dated with all the information listed above, including attachments to:
  - 1. Office of Legal Affairs



ATTENTION: Adjudicatory Hearing Requests

Department of Environmental Protection

401 E. State Street

P. O. Box 402, Trenton, NJ 08625-0402

2. Department of Environmental Protection

Land Use Regulation Program

ATTENTION: Director

P. O. Box 439

Trenton, NJ 08625-0439

3. All co-permittees (w/attachments)

Signature\_\_\_\_\_ Date\_\_\_\_\_]